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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NER HON. C. EDWARD SIMPSON, JUDGE
4
5) ASBESTOS
6 LAOSD ASBESTOS CASES,) NO. JCCP 4674
7 Coordinated Proceeding Special Title)
(Rule 3.550))
8 _____)
9)
10 TINA HERFORD and DOUGLAS HERFORD,)
11)
12 Plaintiffs,)
13)
14 vs.) NO. BC646315
15)
16 AT&T CORP., a subsidiary of AT&T INC. and)
17 its subsidiary PACIFIC BELL TELEPHONE)
18 COMPANY, et al.,)
19)
20 Defendants.)
21 _____)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
THURSDAY; OCTOBER 26, 2017
A.M. SESSION

(APPEARANCES, NEXT PAGE.)

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IRENE KUBERT, CSR, CRR, RMR
Court Reporter Pro Tempore
License No. 10105

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3 OCTOBER 26, 2017; A.M. SESSION
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E X H I B I T S

OCTOBER 26, 2017; A.M. SESSION

PLAINTIFFS' I.D. EVIDENCE REJECTED

1195 Moline's CV 1527

FOR IN WITHDRAWN/

DEFENDANTS' I.D. EVIDENCE REJECTED

19 Article by 1517

Langer and

Nolan

707 Region 9 1510

Letter

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Letter

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1 CASE NUMBER: BC464315
2 CASE NAME: HERFORD VS. AT&T
3 PASADENA, CALIFORNIA THURSDAY, OCTOBER 26, 2017
4 DEPARTMENT NER HON. C. EDWARD SIMPSON, JUDGE
5 REPORTER: IRENE KUBERT, CSR NO. 10105
6 TIME: A.M. SESSION
7 APPEARANCES: (AS HERETOFORE NOTED.)
8 -00o-

9
10 (At 8:53 a.m. the following
11 proceedings were held in open court
12 out of the presence of the jury:)

13 THE COURT: Good morning.

14 (A chorus of "good mornings" was
15 heard.)

16 THE COURT: I understand there's something counsel
17 wishes to bring up before the jury comes in.

18 MR. DUBIN: Your Honor, I think one thing that
19 Mr. Masaitis was going to bring -- I was just going to
20 say, as with the other expert, we're probably going to
21 make a very brief motion to strike as to Dr. Longo when
22 his testimony is concluded.

23 If it's fine, we can wait and do that at the
24 end of the day so as not to interrupt the proceedings.
25 I wanted to flag that so it didn't become an issue of
26 timeliness. Thank you.

27 MR. MASAITIS: Your Honor, if I can just have five
28 minutes to address an issue related to Dr. Moline, who

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1 is going to be testifying later today. Motion in Limine
2 No. 33 concerned, in part, her causation opinion. And
3 it focused on her inability to bridge the gap between
4 the work Dr. Longo and Dr. Compton did and the other
5 literature that she relies on, and anything she could
6 say about the specific talcum powder that Mrs. Herford
7 actually used.

8 And Plaintiffs' counsel indicated at the
9 hearing on the motion in limine that they would address
10 that issue via hypothetical, asking Dr. Moline to assume
11 that the talc Imerys provided and that was in the
12 Johnson & Johnson products was contaminated and base her
13 causation opinion on that.

14 And at the time Your Honor was ruling on the
15 motions in limine, it was in a bit of a vacuum, and Your
16 Honor has now sort of seen much of the case that has
17 been put on. And Dr. Moline is one of the last experts
18 the plaintiffs intend to call, particularly with respect
19 to the scientific issues.

20 And as the Court knows, Dr. Compton and
21 Dr. Longo were not able to extrapolate from the specific
22 testing they did to the millions and millions of
23 containers of Johnson & Johnson products sold, let alone
24 the specific containers of Johnson & Johnson product
25 used by Mrs. Herford.

26 And Dr. Moline admits that she has no
27 ability to do that extrapolation herself. So under
28 Jennings, the type of hypothetical that Plaintiffs wish

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1 to use with Dr. Moline is inadmissible under 801. The
2 Jennings Court specifically says, quote:

3 "An expert's opinion that something
4 could be true if certain assumed facts are
5 true, without any foundation for concluding
6 those assumed facts exist in the case before
7 the jury, does not provide assistance to the
8 jury because the jury is charged with
9 determining what occurred in the case before
10 it, not hypothetical possibilities."

11 And that's 114 Cal.App. 4th 1108, Page 1118.

12 So, Your Honor, we would submit --

13 THE COURT: Go back again and tell me what
14 hypothetical is -- you think they're going to ask.

15 MR. MASAITIS: Well, they specifically said during
16 the motion in limine hearing that they would ask
17 Dr. Moline to provide her specific causation opinion
18 with respect to the cause of Mrs. Herford's mesothelioma
19 based on an assumption in a hypothetical that the Imerys
20 talc and the J&J products that Mrs. Herford used were
21 contaminated with asbestos. And there's no evidence in
22 this case to support that hypothetical.

23 THE COURT: That is what this case is all about.

24 But what's the plaintiffs' position?

25 MR. STUEMK: Plaintiffs' position is there is
26 ample evidence in the case to support the proposition
27 that we are going to ask her to assume, which is that
28 the talc supplied by Cyprus was contaminated with

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1 asbestos.

2 We have testing of the talc samples
3 collected by their own geologist that their own
4 geologist opined were representative of all the talc
5 mined from a certain mine that supplied to Johnson &
6 Johnson for a period of time, including in 1980.

7 And based on that testing, which had
8 asbestos in it, that in and of itself would be
9 sufficient.

10 There is also testing going back decades,
11 including from the time frames in which Imerys Talc
12 America or its predecessors supplied talc to Johnson &
13 Johnson for use in baby powder, showing that baby powder
14 was specifically found to be contaminated with asbestos.

15 There is further evidence coming in this
16 case through the testimony of Johnson & Johnson's
17 corporate rep that they had hundreds upon hundreds of
18 positive samples from their own talc showing it was
19 contaminated with asbestos, including from the time
20 frame in which Cyprus or Imerys and its predecessors
21 supplied talc to Johnson & Johnson.

22 THE COURT: Yes. Doesn't this just -- the
23 traditional jury instruction on hypothetical questions
24 require that the jury find the assumed facts to be true.

25 MR. MASAITIS: Right, but under Jennings it is
26 inadmissible to present that hypothetical opinion if
27 there are not facts to support the hypothetical. And
28 the hypothetical is not that somebody tested talc from a

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1 mine or 30 containers of talcum powder and found what
2 they found.

3 The hypothetical is that the specific
4 containers Mrs. Herford used contained contamination.
5 And nobody in this case will say that. And there is no
6 bridge to gap the evidence that Mr. Stuemke just
7 referenced, the historical information or selected
8 testing of various sorts bridging the gap from that to
9 the specific containers out of the millions that were
10 sold that Mrs. Herford used.

11 THE COURT: Didn't we discuss this before in the
12 context of circumstantial evidence?

13 MR. STUEMKE: We absolutely did. Of course the
14 rule that Imerys is arguing for is that unless a person
15 that used baby powder decided to keep their own
16 particular containers, every particular container they
17 ever used, so that it could later be tested for the
18 presence of asbestos decades after they used it when
19 they've gotten sick is absurd, and it's not required by
20 California law.

21 MR. MASAITIS: Your Honor, that wasn't what I was
22 arguing at all. If they had evidence or an expert who
23 is qualified to say that all of the talc was
24 contaminated, that would be different. Nobody in this
25 case is saying that or is able to say that.

26 THE COURT: Well, I'm going to overrule the
27 objection. I think that the jury will be instructed on
28 what its role is with respect to hypothetical questions.

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1 And I think at one point in time during the motions in
2 limine, there were some discussions about the
3 circumstantial evidence and whether or not the jury will
4 believe that the circumstantial evidence is sufficient
5 to support the finding that the talc that Mrs. Herford
6 used was contaminated.

7 MR. CALFO: Your Honor, Johnson & Johnson joins in
8 that motion by Imerys. Thank you.

9 MR. MASAITIS: Your Honor, may I have a standing
10 objection to the hypothetical questions, that I don't
11 need to raise them each time?

12 MR. STUEMKE: I think that the objection needs to
13 be raised because I don't know exactly what language of
14 the hypothetical is going to be asked.

15 THE COURT: Yes. I think they should be -- it
16 should be raised during the course of the testimony. If
17 it begins to become repetitive, we can deal with that.

18 How much longer do you think we're going to
19 be with Dr. Longo?

20 MR. BENOFF: It depends on the witness, Your
21 Honor. I would hope I have ten minutes.

22 MR. DUBIN: I don't have any more than ten minutes
23 either, I'm sure.

24 THE COURT: Then what's next?

25 MR. STUEMKE: Following Dr. Longo we have
26 Dr. Moline testifying.

27 MR. PANATIER: Your Honor, should Dr. Longo take
28 the stand?

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1 THE COURT: Yes. We'll bring the jury in. Yeah,
2 that saves time.

3 (At 9:03 a.m. the following
4 proceedings were held in open court
5 in the presence of the jury:))

6 THE COURT: The jury has returned.

7 Mr. Benoff, you can continue your
8 recross-examination.

9 MR. BENOFF: Thank you, Your Honor.

10

11 RECROSS-EXAMINATION (RESUMED)

12 BY MR. BENOFF:

13 Q. Good morning, sir.

14 A. Good morning.

15 Q. Now, yesterday at the end of the day,
16 Mr. Panatier read a paragraph from a Region 9 letter and
17 asked if you read it; right? And you said yes. That's
18 what I'd like to follow up on. Okay?

19 A. Yes.

20 Q. All right. Now, in the report that you
21 wrote in this case of all the work you did for this
22 case, did you describe any scientific analysis you had
23 done of anything mentioned in the Region 9 letter?

24 A. As for the actual samples that Region 9 did,
25 no, sir. The samples that Region 9 analyzed, we
26 did not.

27 Q. Okay. Now, yesterday we were talking about
28 how after reading Region 9's letter, other scientists

1 stood up and said R.J. Lee was right. And I believe you
2 said you had not seen the letter from Professor Wylie at
3 the University of Maryland; is that right?

4 A. That's right.

5 Q. Do you know anything about Professor Wylie's
6 criticism of the Region 9 letter?

7 A. No, sir, I haven't read it.

8 Q. Okay. Were you aware that Dr. Langer, one
9 of the scientists you rely on, also wrote a letter to
10 say that R.J. Lee was right and Region 9 was wrong?

11 A. No, sir.

12 Q. I'd like to show you a document we've
13 premarked as Exhibit 5817.

14 (Defense Exhibit 5817 was marked for
15 identification by the judicial
16 assistant.)

17 MR. BENOFF: May I approach, Your Honor?

18 THE COURT: Yes.

19 MR. PANATIER: Your Honor, this is subject to the
20 same objections as yesterday. This is just a different
21 person that -- this is Dr. Langer. So the objections
22 are the same.

23 THE COURT: Let's see if he can lay a foundation.

24 Q. BY MR. BENOFF: The question is, sir, have
25 you seen Dr. Langer's letter criticizing --

26 THE COURT: Just ask him -- don't testify as to
27 what's in the letter.

28 THE WITNESS: No, sir.

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1 Q. BY MR. BENOFF: Do you know anything about
2 Dr. Langer's criticism of the Region 9 letter?

3 A. No, sir, I haven't read the letter.

4 Q. Then we'll leave that for someone who knows
5 about it.

6 I'd like to show you, sir, a document that
7 we've premarked as Exhibit 5818, a letter from a
8 gentleman named Malcolm Ross criticizing the Region 9
9 letter.

10 (Defense Exhibit 5818 was marked for
11 identification by the judicial
12 assistant.)

13 Q. BY MR. BENOFF: Sir, have you seen that
14 letter before?

15 A. No, sir. I don't even know who
16 Malcolm Ross is.

17 Q. Do you know anything about Ross' criticism
18 of the Region 9 letter?

19 A. No, sir.

20 Q. Okay. We'll leave that for someone who
21 knows more about it.

22 But you are aware that the USGS was asked by
23 Region 9 to conduct an independent study; right?

24 A. Yes, sir.

25 Q. Okay. And you are aware that in that study
26 the USGS said that although the little particles the
27 EPA -- that Region 9 found met the counting rules, they
28 didn't meet the definitions of asbestos; right?

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1 A. No, sir. I'm not aware of that.

2 Q. Okay.

3 James, if we can please display Exhibit 709,
4 the USGS "Mineralogy and Morphology of Amphiboles
5 Observed in Soils and Rocks in El Dorado, California."

6 MR. PANATIER: Your Honor, I'm going to object.
7 This is outside the scope of redirect.

8 MR. BENOFF: They brought up the Region 9 letter.
9 This is directly related to --

10 THE COURT: I'll ask for argument if I need it.
11 Overruled.

12 MR. BENOFF: If we can look at, James, the
13 Executive Summary section, please, the second-to-last
14 paragraph.

15 And it begins:

16 "In summary, many of the amphibole
17 particles examined in this study meet the
18 counting rule criteria used by USEPA from
19 both chemical and morphological
20 requirements. However, most of these
21 particles do not meet the morphological
22 definitions of commercial grade asbestos."

23 Did I read that correctly, sir?

24 A. Yes, sir.

25 Q. Okay. And if you look down towards the last
26 sentence on that page, you'll see that the USGS says:

27 "Therefore, a collaborative research
28 effort is needed by the health community

1 with assistance from experienced
2 mineralogists and analysts to develop a
3 better understanding of potential health
4 effects of what is currently called
5 'naturally occurring asbestos.'"

6 Did I read that correctly, sir?

7 A. You did.

8 Q. So the federal government is not rejecting
9 mineralogy, is it?

10 A. No, sir. I don't think the federal
11 government ever rejected mineralogy. What the federal
12 government stated was these meet the counting rules, and
13 in their response to R.J. Lee said these were defined as
14 asbestos fibers.

15 Now, that gets back into the debate --

16 MR. BENOFF: Your Honor, I move to strike as
17 nonresponsive.

18 THE COURT: You've answered the question.

19 THE WITNESS: I'm sorry, Your Honor.

20 Q. BY MR. BENOFF: In fact, the exact opposite.
21 The U.S. Government is saying Region 9 should work with
22 mineralogists, isn't it?

23 A. They said they should be assisted, yes.

24 Q. And I'd like to direct your attention to
25 Page 41 of this document, the very last sentence on that
26 page, where the USGS says, "However, if the USEPA study
27 had been conducted" --

28 MR. DUBIN: It's not on the screen.

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1 MR. BENOFF: Okay. I'll just read it.

2 "However, if the USEPA study had been
3 conducted as an enforcement action, it would
4 be difficult to classify the majority of
5 actinolite magnesiohornblende of the El
6 Dorado area as an actionable material
7 because, one, the majority of the particles
8 are prismatic, not fibrous; and, two,
9 approximately 40 percent of the particles
10 are magnesiohornblende."

11 Q. Now, sir, my question for you is are you
12 saying that magnesiohornblende is actinolite asbestos?

13 A. No, sir I'm not.

14 Q. I'd like to direct your attention back to
15 the Region 9 letter, which has been premarked as
16 Exhibit 707 for identification purposes only.

17 (Defense Exhibit 707 was marked for
18 identification by the judicial
19 assistant.)

20 Q. BY MR. BENOFF: On page -- excuse me. On
21 Page 4 of that letter, at footnote 5, the EPA offers a
22 definition of asbestiform.

23 James, will you please put that up on the
24 screen.

25 And Region 9 says, "Asbestiform: Having the
26 form or structure of asbestos"; correct?

27 A. Yes, sir.

28 Q. Now, true or false? After the scientists

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1 and the USGS weighed in, the EPA's official regulatory
2 definition of asbestos is not what Region 9 said.

3 A. No, I disagree with that.

4 Q. Well, let's look at what the official
5 definition in the Code of Federal Regulations, the law
6 of the U.S., is.

7 James, can you please pull that up.

8 40 CFR Section 7763. The official EPA
9 definition of asbestiform is, "A specific type of
10 mineral fibrosity in which the fibers and fibrils
11 possess high tensile strength and flexibility."

12 That's the official version, not what
13 Region 9 said in its letter; right?

14 A. I apologize. That's a different question.
15 You said the official EPA definition of asbestos. Then,
16 yes, we can go back to asbestiform again for polarized
17 light microscopy for grab samples. But EPA, how we
18 count those fibers, have the distinct definition of
19 greater than .5, 5 to 1 aspect ratio, and parallel size.

20 That's EPA's definition for when we are
21 doing analysis for people who want to know if the
22 building is safe to go back into, does the building have
23 asbestos in it. That's their definition of asbestos
24 fibers.

25 Q. Thank you.

26 You mean the definition in the EPA
27 regulation that defines it as the asbestiform version.
28 You remember seeing that yesterday; right?

1 A. Yes, sir. We debated the asbestosiform
2 version. Actually it's what happens in the transmission
3 light microscope. I'm not sure I disagree with that.
4 When you're pulling out a big --

5 MR. BENOFF: Your Honor --

6 THE COURT: I think you've answered the question.

7 Q. BY MR. BENOFF: My question to you, sir,
8 wasn't the definition of asbestos. My question was,
9 after the scientists and the U.S.G. weighed in, the
10 official regulatory definition of asbestosiform is not
11 what Region 9 had in its letter. It's this definition,
12 which is in the TEM section and which talks about high
13 tensile strength and flexibility.

14 True or false?

15 A. That's not true or false. You're comparing
16 apples and oranges. It's true for the oranges, but it's
17 not true for the apples.

18 Q. Now, the Region 9 letter was talking about
19 naturally occurring tremolite and other amphiboles;
20 correct?

21 A. Yes, sir.

22 Q. So background-level; right?

23 A. Well, yes and no.

24 Q. And they were talking about naturally
25 occurring tremolite and amphiboles in California; right?

26 A. Yes, sir, for when they were driving ATVs
27 over it and disturbing the soil and generating a source
28 of airborne asbestos from that naturally occurring.

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1 That's absolutely correct.

2 Q. Now, at deposition you testified there was
3 no such thing as background levels of tremolite, didn't
4 you?

5 A. That's not quite right. I said that, but I
6 also said you would have to have the source in order to
7 have background levels of tremolite.

8 Q. True or false, at deposition you said
9 there's only one place in the country --

10 THE COURT: If you have something to read, you can
11 read the question and read the answer.

12 MR. BENOFF: All right.

13 Q. Then going back to your deposition, sir,
14 Page 175.

15 MR. PANATIER: In which volume?

16 MR. BENOFF: Volume 1, Page 175, starting at
17 line 6.

18 "QUESTION: In your report you argue
19 that there are no background levels of
20 tremolite; correct?

21 "ANSWER: That's correct.

22 "QUESTION: Are you saying that
23 nonasbestos tremolite has no background
24 levels anywhere in the country?

25 "ANSWER: The only area that you may
26 have background -- and background levels
27 means there has to be a source -- there is
28 no such thing as just ubiquitous tremolite

1 fibers floating around this country.
2 Certainly in Libby, Montana, when that mine
3 was activated and all the materials that
4 were used around that town between the track
5 and the high school, all the insulation, the
6 daily mining, yes, during that you could
7 find background. You could find background
8 in the tree bark of trees. But everywhere
9 else in the country, you have to have a
10 source of tremolite. So, no, there's no
11 measurable background of tremolite in this
12 country other than Libby, Montana, or some
13 of the other vermiculite mines."

14 Q. That was the testimony you gave under
15 penalty of perjury on that day; correct, sir?

16 A. That's correct. I don't believe that's
17 inconsistent. What I'm saying now, you have to have a
18 source. I didn't name specifically the ATVs running
19 over the naturally occurring material in the soil. But
20 in order for them to measure it, they had to disturb it,
21 just like Libby, Montana, vermiculite had to be
22 disturbed.

23 THE COURT: You've answered the question.

24 Q. BY MR. BENOFF: Now, when you gave that
25 sworn testimony under penalty of perjury, you had
26 already read the Region 9 letter that said there was
27 naturally occurring tremolite in California; right?

28 A. Yes, sir.

1 Q. California is where Mrs. Herford lived;
2 right?

3 A. That's correct.

4 Q. In fact, in other cases you've testified
5 that amphiboles are everywhere in the Earth's crust, not
6 just Libby, Montana; right?

7 A. There's amphiboles everywhere in the Earth's
8 crust because there are 90 different amphiboles. There
9 is tremolite in the Earth's crust, because we're dealing
10 with it here today. But I stick to my statement. You
11 have to have a source of tremolite in order to get air
12 samples or get it distributed so people get exposed.

13 Q. Now, the Region 9 letter criticized R.J. Lee
14 for using the R-93 bulk sampling method for air samples;
15 right?

16 A. For using that definition of what asbestos
17 is in bulk sample testing, yes, they did.

18 Q. So that means Region 9 is saying you have to
19 use the method for the kind of sample you're analyzing;
20 right?

21 A. Yes, sir.

22 Q. And you violated that rule in this case,
23 didn't you?

24 A. No, sir.

25 Q. You looked at bulk samples; right?

26 A. We did look at bulk samples. I did not
27 violate any rule.

28 Q. Did you use the EPA method for bulk samples?

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1 A. No, sir.

2 Q. So you did the same sort of thing that
3 Region 9 accused R.J. Lee of doing, didn't you?

4 A. No, sir. They're not accusing. They're
5 accusing him of using the definition for bulk samples,
6 telling them that bulk sample definition for asbestosiform
7 or asbestos is not applicable for TEM analysis. That's
8 what Region 9 is saying. That's what I'm saying.

9 Q. AHERA, the method you chose, says you have
10 to use a PLM to analyze bulk samples; right?

11 A. If you're analyzing construction products,
12 yes. If that's -- if you're going to use it for
13 regulatory purposes, that's correct.

14 Q. Here it doesn't actually limit that
15 definition to construction materials, does it? It says
16 products or materials, doesn't it?

17 A. That's part of it, yes.

18 Q. Yes. And you were looking at bulk samples
19 of a product or material, weren't you?

20 A. We were looking at bulk samples of a product
21 with trace amounts of -- potentially trace amounts of
22 tremolite that can only be seen by transmission electron
23 microscopy.

24 Q. And AHERA says bulk samples "shall be
25 analyzed for asbestos content by PLM"; right?

26 A. That's what it states.

27 Q. And you broke that rule.

28 A. We did not break the rule for this analysis.

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1 I will not agree with you.

2 Q. Did you use a PLM?

3 A. No. But you're --

4 Q. You've answered the question. Thank you,
5 sir.

6 MR. BENOFF: I'll pass the witness.

7

8 RECROSS-EXAMINATION

9 BY MR. DUBIN:

10 Q. Good morning, Dr. Longo.

11 A. Good morning, sir.

12 Q. I wore my glasses today to make it a little
13 easier to tell us apart over here.

14 A. Let's see. That's still you.

15 Q. That and he's in much better shape than I
16 am. I'm just going to cover two quick topics with you.
17 The first is an article that you discussed -- I think it
18 was first raised by Mr. Benoff, and then you were asked
19 about it by Mr. Panatier in his redirect examination.
20 And that was an article by Langer and Nolan from 1991.

21 And if we can pull that up, I've marked it
22 as Langer 19.

23 (Defense Exhibit 19 was marked for
24 identification by the judicial
25 assistant.)

26 Q. BY MR. DUBIN: And if we go to Page 285 --
27 or 265. 65. Okay.

28 And if you can blow up on the Discussion and

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1 Conclusion first, you see where it says the OSHA
2 Asbestos Standard?

3 A. Not yet. Okay.

4 Q. Okay. "Used to regulate asbestos minerals";
5 right? "In the mining and milling environment, crushing
6 of rocks generate fragments of normal amphiboles which
7 conform to the OSHA-NIOSH definition of asbestos."

8 That's talking about the thing that we were
9 before that you can take a nonasbestos rock and crush it
10 up and some of the particles are going to fit counting
11 definitions for these regulations; right?

12 A. That's correct.

13 Q. Okay. It says:

14 "If the asbestos standard is to
15 regulate asbestos only, then polarized light
16 microscopy is required to identify and
17 distinguish between the minerals present.
18 The identification is required for effective
19 monitoring."

20 Do you see that?

21 A. Yes, sir.

22 Q. This is 1991; right? I believe that was the
23 date of this article. Actually it wasn't an article.
24 It was a publication. Something happened with respect
25 to OSHA and this distinction we've all been talking
26 about so much between non-asbestiform and asbestiform in
27 1992, the year after this was written; right?

28 A. I think so.

1 Q. Right. And what happened -- and we can --
2 you're familiar with the OSHA regulations from 1992;
3 right? The change?

4 A. A little bit, but I'd have to look at it.

5 Q. Let's look at that then.

6 If we can call -- it's been marked as
7 defense Exhibit 7659.

8 MR. PANATIER: Your Honor, this is outside the
9 scope of redirect.

10 THE COURT: Just a moment. What are we asking him
11 about?

12 MR. DUBIN: He was talking about what the EPA's
13 official position is. I'm just going to talk for one
14 second about what OSHA's official position is on the
15 issue that Mr. Panatier raised in his redirect. It will
16 take me less than a minute.

17 MR. PANATIER: I never talked about it.

18 MR. DUBIN: We're talking about government
19 agencies' positions on --

20 THE COURT: Go ahead.

21 MR. DUBIN: Thank you. I'll be very brief.

22 Q. This is 1992 OSHA. And if we can blow up
23 the left side, the middle, so we can see where it says
24 "available evidence." "OSHA has reviewed the available
25 evidence."

26 So what happened is in 1992, the year after
27 this article was written, OSHA actually considered one
28 of the questions that we have here, which is whether or

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1 not it should be regulating nonasbestiform materials
2 that happen to meet the counting criteria that had
3 previously been stated in their regulation; right?

4 A. In 1992 they were considering it. They
5 didn't go with it because of 1994, when they put out the
6 method, which was the same method that all fiber
7 definitions that we've been talking about, 3 to 1 aspect
8 ratio, greater than five micrometers and greater than
9 .25, is the exact same both before this and after this.
10 So they were considering it, but it didn't change
11 anything in the protocol.

12 Q. Well, what they said is:

13 "OSHA has reviewed relevant evidence
14 concerning the health effects of
15 nonasbestiform tremolite, anthophyllite, and
16 actinolite, and has also examined the
17 feasibility of regulatory options. Based on
18 the entire rule-making record before it,
19 OSHA has made a determination that
20 substantial evidence is lacking to conclude
21 that nonasbestiform tremolite,
22 anthophyllite, and actinolite present the
23 same type or magnitude of health effects as
24 asbestos."

25 Right? That's what they said.

26 A. That's what they said.

27 Q. And then what they did is in the regulations
28 that followed they changed, so that when you read the

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1 regulation it explicitly said "tremolite asbestos,"
2 "anthophyllite asbestos"; right?

3 A. I have to -- I'm not -- I'm assuming they
4 said that.

5 Q. Okay. Going back to the article, you were
6 directed to another part of it and that is -- if we go
7 back to line 1 at 285 -- 65 in the acknowledgments.

8 And this is a part of the article that you
9 discussed with Mr. Panatier. He brought up the fact
10 that this article by Drs. Langer and Nolan was supported
11 by a fellowship from the Stony Wold-Herbert Fund and the
12 writing of this manuscript was made possible by a grant
13 from the Asbestos Institute of Canada and the R.T.
14 Vanderbilt Company. You recall discussing that with
15 Mr. Panatier; right?

16 A. Yes, sir.

17 Q. I guess the implication is somehow that the
18 study is biased or bad because a company that was
19 involved in the talc industry was provided funding for
20 the manuscript; right?

21 A. I assume it would be the same thing as
22 saying I'm biased because plaintiffs' attorneys hire me
23 or defenses' are biased because the defense attorneys
24 hire them. I let the merits stay where they are. I
25 don't make those decisions.

26 Q. Well, you did discuss that with
27 Mr. Panatier. And, you know, your work here on
28 Johnson & Johnson, that hasn't been published anywhere;

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1 right?

2 A. No, sir. I don't recall criticizing R.T.
3 Vanderbilt for being involved in this. It was pointed
4 out to me, and I said yes.

5 Q. But, sir, and certainly if you had an
6 acknowledgment on your paper, you would have to say that
7 the writing of your report was made possible by funds
8 from the Simon Greenstone Law Firm, the Lanier Law Firm,
9 and the Kazan Law Firm, all who represent plaintiffs in
10 asbestos litigation; right?

11 A. Certainly if and when I do publish this
12 work, I will acknowledge on there that this work was
13 involved in plaintiffs' actions, just like you're
14 supposed to.

15 Q. And since we're talking about bias, I think
16 I would be remiss not to ask this. I wasn't going to
17 originally. But you are married to a former plaintiffs'
18 asbestos attorney; right?

19 THE COURT: Sustained.

20 [Laughter]

21 THE WITNESS: I know why that shocks you.

22 THE COURT: Let's move along.

23 MR. DUBIN: All right. No further questions.

24 MR. PANATIER: Your Honor, may I ask the Court's
25 indulgence just to ask one question on the document that
26 I didn't ask any questions about to clarify?

27 THE COURT: Yes.

28 MR. PANATIER: Thank you, Your Honor.

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1 FURTHER REDIRECT EXAMINATION

2 BY MR. PANATIER:

3 Q. The USGS document that was shown -- I just
4 want to show you one passage right here at the very end.

5 "Finally, it seems appropriate, in
6 light of the issues addressed in this
7 report, to stress that it is absolutely not
8 the role of the analytical or mineralogical
9 communities to make health-based decisions
10 or to make independent analytical
11 assessments that directly or indirectly
12 influence health-based outcomes. It is the
13 obligation of the analytical and
14 mineralogical communities to provide
15 accurate, unbiased, and scientifically sound
16 information to the health and regulatory
17 communities so that appropriate and informed
18 health-related policy and regulatory
19 decisions can be made."

20 Do you agree with that?

21 A. Yes.

22 MR. PANATIER: That's all I have.

23 THE COURT: You can step down, Dr. Longo.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Thank you for your testimony. Thank
26 you for coming.

27 What does the plaintiff have planned for us
28 next?

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1 MR. STUEMKE: Your Honor, next we're going to call
2 Dr. Jacqueline Moline.

3 THE COURT: Do you want to ask her to come
4 forward.

5 MR. PANATIER: Your Honor, I'm going to get out of
6 Mr. Stuemke's way. I'm going to sit back here if that's
7 okay.

8

9 JACQUELINE MOLINE,
10 called as a witness by the Plaintiffs, was sworn and
11 testified as follows:

12

13 THE JUDICIAL ASSISTANT: Do you solemnly state
14 that the testimony you may give in the cause now pending
15 before this Court shall be the truth, the whole truth,
16 and nothing but the truth, so help you God?

17

THE WITNESS: Yes.

18

THE JUDICIAL ASSISTANT: You may have a seat.

19

20 Ma'am, can you please state and spell your

name.

21

22 THE WITNESS: Dr. Jacqueline Moline,
J-A-C-Q-U-E-L-I-N-E, M-O-L-I-N-E.

23

THE JUDICIAL ASSISTANT: Thank you.

24

25

DIRECT EXAMINATION

26

BY MR. STUEMKE:

27

Q. Good morning.

28

A. Good morning.

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1 Q. And, Doctor, can you introduce yourself to
2 the ladies and gentlemen of the jury, please?

3 A. Sure. My name is Dr. Jacqueline Moline, and
4 I'm an occupational and environmental medicine
5 specialist.

6 Q. And what is occupational and environmental
7 medicine?

8 A. So it's a specialty that deals with people
9 who have exposure-based diseases. It can arise out of
10 someone's workplace, and then we would call it
11 occupational. Or it can arise out of the environment,
12 which could be the home, it could be the general
13 environment. It could be the effects of the fires, for
14 example, that have been affecting this state and people
15 having breathing difficulties. That would be an
16 environmental exposure.

17 Q. Okay. Is occupational and environmental
18 medicine concerned with addressing the causes of
19 disease?

20 A. Yes.

21 Q. And you talk about environmental. So we
22 hear "occupational medicine." It's not just confined to
23 the workplace; is that right?

24 A. Right. Exposures don't only occur in the
25 job. They may occur in a home. They may occur outside.
26 So it's really looking at exposures in a more -- on a
27 general level. And you might have the same exposure
28 either at home and at work. Just depending on where it

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1 occurs, you might call it occupational versus
2 environmental.

3 Q. Is there something -- is there a field of
4 preventive medicine?

5 A. There is. It's a specialty. And actually
6 occupational medicine falls within the American Board of
7 Preventive Medicine, for example, which is the
8 accrediting body for board certification in our field.
9 And preventive medicine is trying to prevent people from
10 getting sick.

11 Q. And you referenced board certification in
12 your field. Are you board certified?

13 A. I am.

14 Q. What does that mean?

15 A. Board certified means that you have
16 completed a training program in an area -- whether it's
17 in surgery, internal medicine or occupational
18 medicine -- and that you sat for the examination and
19 passed the examination.

20 Q. How long have you been board certified? And
21 specifically what is your board certification?

22 A. I'm what we call doubly board certified.
23 I've been board certified in internal medicine since
24 1991, and I've been board certified in occupational
25 medicine since 1994, 1995.

26 Q. I want to talk with you some about your
27 educational background and experience.

28 I'll hand you what we've marked as

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1 Plaintiffs' Exhibit 1195.

2 (Plaintiffs' Exhibit 1195 was marked
3 for identification by the judicial
4 assistant.)

5 Q. BY MR. PANATIER: Can you tell us what this
6 document is, please, Dr. Moline.

7 A. This is a copy of my curriculum vitae, or
8 CV, from May.

9 Q. So we've got 27 pages. We're not going to
10 go through all of them right now. But can you just give
11 us an outline of your educational background to start
12 with, if you would.

13 A. Sure. As you can see, I went to the
14 University of Chicago for college and medical school. I
15 was a history and philosophy of science major in
16 college. And then I got my medical degree from the
17 University of Chicago Pritzker School of Medicine.

18 I then went to do an internal medicine
19 residency program at Yale. And that was a three-year
20 program. When that concluded, I did a second residency
21 program at Mt. Sinai School of Medicine. And during
22 that period of time, I also received a master of science
23 degree in community medicine.

24 Q. Okay. And first, the last thing you said,
25 the master of science degree in community medicine, what
26 type of degree is that and what sort of particular
27 training did that involve?

28 A. So it's the equivalent of a master of public

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1 health. For a variety of reasons, at that point it's
2 not called a master of public health, but fulfilled the
3 same requirements of a master of public health. And
4 that involved course work in -- epidemiology,
5 biostatistics, behavioral health, medical care
6 organization and environmental and occupational health
7 are the five core areas that we covered.

8 It also included, because this was a program
9 targeted in occupational medicine, industrial hygiene
10 courses, advanced occupational epidemiology courses.

11 Q. So as you describe your background, is it
12 fair to say that you -- that your emphasis in your
13 career shifted from a focus on internal medicine to what
14 you've talked about here today, occupational
15 environmental medicine?

16 A. Yes.

17 Q. And how did that come about?

18 A. When I was doing my internal medicine
19 training, I wasn't quite sure what I was going to
20 specialize in, if I was going to be a general internist
21 or whether I was going to specialize in different areas.

22 I was a little frustrated when patients were
23 described as an interesting kidney case or an
24 interesting case that came in, and I said it's a person
25 with a liver problem, a person with a kidney problem.

26 And I was lucky enough to be at a place that
27 had a very strong occupational medicine program at Yale
28 and some great mentors. And they suggested that I look

1 into the field, which I actually hadn't known a lot
2 about.

3 And I did, and I said, you know, the focus
4 here is really on what someone does and how they occupy
5 themselves and how that might affect their health, and
6 then they might have a kidney problem or a liver problem
7 or a lung problem. But it's the person first who does
8 something that leads to a problem.

9 Q. Okay. And so did you, then -- is that why
10 you chose to have the residency in -- I guess it was a
11 fellowship in occupational health and research?

12 A. Well, actually it was considered a second
13 residency initially in occupational medicine. Because I
14 had completed internal medicine, it was technically --
15 if I had stayed at Yale, I would have been called a
16 fellow, because to be a fellow means you've completed a
17 first residency. Because of the nature of some of the
18 requirements, in occupational medicine it's called a
19 residency.

20 So it was a second residency where I
21 specialized. I then did -- the fellowship in
22 occupational health and research was a research
23 fellowship. It was an award that I received afterwards.

24 Q. Okay. Now, backing up a second, you talked
25 about getting your master's degree. You talked about
26 some of the fields that you focused on in that course of
27 study. I wanted to ask you specifically about a couple
28 of them. First you mentioned epidemiology.

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1 We've heard a little bit about epidemiology
2 in this case, but from the standpoint of somebody who
3 studied it, can you tell us what epidemiology is?

4 A. Epidemiology is a discipline that looks at
5 the study of diseases in populations. So you heard the
6 word epidemic. So that comes from what might occur in a
7 large population. That's really what the study of
8 epidemiology does. And it looks more broadly at the
9 effect on groups of individuals, not specifically on one
10 individual per se.

11 Q. Okay. And in your field of occupational and
12 environmental medicine, what kind of role does
13 epidemiology play?

14 A. Well, it's one of the -- it's integral to
15 much of what we do. I mean it's integral to all
16 elements of medicine, really, because much of what we
17 know about heart disease and the effects -- what causes
18 heart disease comes from epidemiologic studies looking
19 at large groups of people and seeing that cholesterol
20 levels are associated with heart disease. That comes
21 from a large epidemiologic study.

22 In occupational and environmental medicine,
23 you'll find groups of individuals in general where you
24 look and see if there's a connection between what they
25 might have been exposed to and what diseases might
26 develop over time.

27 Q. And another area that you mentioned was
28 industrial hygiene. What is industrial hygiene?

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1 A. Industrial hygiene is a discipline that
2 looks at exposures in the industrial setting.
3 Traditionally they can actually look in the environment
4 as well. But they are more of a hands-on measurement
5 science where they'll actually measure levels of
6 exposure to see what they might be in a particular
7 exposure scenario or in a workplace.

8 Q. Okay.

9 A. It's not a health specialty where they're
10 not evaluating the health of individuals. They're
11 evaluating what the exposures might be.

12 Q. Okay. And how does industrial hygiene play
13 into occupational medicine?

14 A. Well, it's another key factor. In the same
15 way that when I'm seeing patients, I look at what --
16 their blood test values to provide information for me,
17 industrial hygiene can provide me with what someone's
18 exposure levels have been if I'm lucky enough to have
19 those measurements that were done.

20 Q. And how does the measurement of somebody's
21 exposure levels come into play in what you do?

22 A. Well, you're looking to see if -- for
23 example, we just recently treated some folks who worked
24 in a firing range where there was lead exposure from the
25 bullets. And they came to us because they had elevated
26 lead levels. And we worked with our industrial
27 hygienist, who went out and evaluated what was going on
28 at the firing range. And it turned out their

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1 ventilation system wasn't working so that there was a
2 lot of lead in the air.

3 They made recommendations on how to fix it.
4 It was fixed. And so we took care of the patient. So
5 we were looking for the source of the exposure. So we
6 worked hand in hand with them to do the actual
7 measurement that we could then translate into when it
8 was safe to send the lead-poisoned folks back to the
9 workplace because the lead levels were no longer
10 elevated.

11 Q. Okay. And turning back to your CV, you
12 talked about the residency and the fellowship at
13 Mt. Sinai School of Medicine. Can you tell us what it
14 was that you were doing during that time at Mt. Sinai?

15 A. So when I started at Mt. Sinai, I started in
16 July of 1991, and I started seeing patients as part of
17 my training. We saw a lot of patients in the '90s. We
18 saw a lot of patients with asbestos exposures. Looked
19 at a lot of X-rays.

20 We had what we call X-ray rounds, where we
21 would go over dozens of films per week with someone who
22 is trained in reading films for people with dust
23 exposure.

24 And I started learning about various
25 elements within the field. And then when I continued
26 with fellowship, I was doing a research project. We
27 were looking at cancer markers in a group of
28 asbestos-exposed workers. I was working with a basic

1 scientist on that project.

2 Q. Okay. And we heard a little bit about this
3 from Dr. Gordon, but from your perspective doing
4 occupational medicine at Mt. Sinai, did you come to
5 learn whether Mt. Sinai had played an important role in
6 the development of knowledge about asbestos hazards?

7 A. In the '60s, '50s, '60s, '70s, '80s, and in
8 the '90s, I think it was the place in the United States
9 where much of the knowledge regarding the health effects
10 of asbestos came from. There was a physician there,
11 Dr. Irving Selikoff, for whom the clinical center is
12 named, who really devoted his -- it became a second
13 career. His first career was finding a medicine to
14 treat tuberculosis. His second career was identifying
15 the causes of asbestos-related diseases, or describing
16 them.

17 And there were a number of scientists at
18 Mt. Sinai, particularly in the '60s, 70s, and '80s, who
19 worked with Dr. Selikoff on that work in advancing a lot
20 of the knowledge that we have regarding asbestos.

21 Q. After completing your fellowship at
22 Mt. Sinai, did you stay on there?

23 A. I did. So I was offered a faculty position
24 where I moved up in the academic rating. And I had a
25 number of different roles within the department, which
26 changed its name a little bit, but where I was -- one
27 constant theme that was throughout was I had a patient
28 population and I saw patients consistently during that

1 time.

2 I became more involved in teaching. I ended
3 up being the residency director. So I directed the
4 program that I had been trained in. And then I ended up
5 being head of the government-funded New York and New
6 Jersey Education and Research Center, which is funded by
7 the agency in the government that's responsible for
8 training and occupational safety and health, which is
9 called NIOSH, or the National Institute for Occupational
10 Safety and Health.

11 And we had programs in occupational
12 medicine, industrial hygiene, occupational safety,
13 continuing education, ergonomics and biomechanics. At
14 some point we had nursing in the programs, occupational
15 health nursing. And overseeing how those programs work
16 together and actually making sure our students all work
17 together. So we had interdisciplinary seminars --

18 THE COURT: I think you've answered the question.
19 Let's try to keep the narratives at a minimum.

20 MR. STUEMKE: Okay.

21 Q. And how often when you were at Mt. Sinai did
22 you have involvement with people with asbestos exposure?

23 A. From day one, when I arrived, I began seeing
24 patients with asbestos exposure.

25 Q. Okay. And all of us when we go to a doctor,
26 the doctor asks us what's going on, how are we feeling,
27 that kind of thing. Is that called a history?

28 A. Yes.

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1 Q. And as an occupational medicine doctor, do
2 you take histories of patients?

3 A. We do. I mean the thing that differentiates
4 an occupational physician is we spend a lot more time on
5 the exposures and the jobs that people have had, the
6 tasks that they've done and where they might have had
7 those exposures, and also ask about hobbies and other
8 exposure scenarios that typically aren't asked in a
9 general medical history.

10 Q. Okay. Is that something you've gotten
11 training to do?

12 A. Yes.

13 Q. Is that something that you actually train
14 others how to do?

15 A. Yes.

16 Q. Why is it important as an occupational
17 medicine physician to take that level of a detailed
18 history?

19 A. Often people come to you and say why do I
20 have this disease. And you have to be able to delve
21 into what they might have been exposed to that might
22 have contributed to that disease.

23 Q. And have you been involved with any
24 professional organizations relating to occupational
25 medicine?

26 A. I have.

27 Q. Can you briefly trace some of that for us?

28 A. Sure. So I've been a member of the American

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1 College of Occupational and Environmental Medicine. And
2 I'm on the executive board and currently secretary of
3 the New York Chapter. I've been involved with the
4 American Public Health Association, The Association of
5 Teachers of Preventive Medicine, when I was back doing
6 residency training.

7 I'm also a member of the American College of
8 Physicians, which is the internal medicine professional
9 organization, as well as the State Medical Society.

10 Q. Okay. And have you -- we've heard about the
11 peer-review literature. Have you published in the
12 peer-review literature?

13 A. I have.

14 Q. Have you ever published on a topic of
15 asbestos or asbestos disease?

16 A. Yes.

17 Q. About how many times?

18 A. Specifically related to asbestos or asbestos
19 exposure, I have two articles recently.

20 Q. Okay. And have you served on the other side
21 of that? In addition to being an author, have you
22 served as a peer reviewer?

23 A. Yes.

24 Q. For what journals?

25 A. Well, I'm deputy editor in chief of the
26 Archives of Environmental & Occupational Exposure
27 [verbatim] now. And I've also been a reviewer for the
28 Journal of the American Medical Association, for the

1 Journal of Occupational and Environmental Medicine, for
2 Occupational and Environmental Medicine, which is
3 another journal that has a very similar name, for a
4 number of other journals in the field.

5 Q. And for how long after your fellowship ended
6 at Mt. Sinai did you stay on there in the way that you
7 described?

8 A. So I stayed -- I finished my training in
9 1993 and I stayed at Mt. Sinai until 2010.

10 Q. Okay. And how did your job change in 2010?

11 A. In 2010 I was offered the opportunity to
12 join a large health system in New York State called
13 Northwell Health and develop occupational medicine for
14 the health system. We have 23 or 24 hospitals now. And
15 so I'm in charge of a department called Occupational
16 Medicine, Epidemiology and Prevention.

17 Q. Okay.

18 A. And we also started a new medical school in
19 affiliation with Hofstra University, which is called the
20 Zucker School of Medicine at Hofstra/Northwell. And so
21 I've been doing that since 2010.

22 Q. Okay. And do you maintain a clinical
23 practice?

24 A. I do.

25 Q. And in the field of occupational medicine,
26 what is a clinical practice?

27 A. So we actually -- New York State has a
28 clinic network where there are a number of regional

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1 clinical centers. We have -- we are in charge of the
2 Long Island clinical centers, which is where our -- some
3 of our hospitals are based. And we see folks who have
4 work-related exposures who come to us.

5 I get referrals in from employers, from work
6 groups, from unions, from word of mouth, from my
7 colleagues, other physicians, with folks that might have
8 an exposure to see if it's affecting their health.

9 Q. Okay. And do you actually see groups of
10 people with a history of exposure to asbestos and track
11 their health?

12 A. We do. We're actually -- we have what we're
13 calling the Occupational Health Registry -- or the
14 Occupational Lung Registry, I'm sorry -- where we're
15 following groups of workers who have had asbestos
16 exposure. And we see about 700 individuals a year.

17 I'm in charge of that overall program, where
18 we see how many of them have evidence of
19 asbestos-related diseases and make recommendations to
20 their overall health, whether it's an asbestos-related
21 disease, or whether it's general health, whether they
22 have high blood pressure, diabetes, or something else
23 that we may discover that we find that isn't well
24 controlled.

25 Q. And I understand that you've had some
26 involvement in dealing with the aftermath in terms of
27 health effects from 9/11; is that right?

28 A. Yes.

1 Q. Can you tell the jury about that, please?

2 A. Sure. So I was at Mt. Sinai when
3 September 11 happened in 2001. And we began seeing
4 patients within a couple of weeks, two, three weeks
5 after 9/11, who had a variety of respiratory problems,
6 and realized that we didn't have a true sense of the
7 health effects following 9/11.

8 So we worked to establish programs which
9 initially evaluated folks to see what happened to their
10 health and then over time were provided funds to be able
11 to treat them.

12 In 2010 we actually -- there's a
13 congressional law called the Zadroga Act, which allows
14 us to continue treating individuals with World Trade
15 Center-related exposures -- we see them on an annual
16 basis -- and also treat any World Trade Center-related
17 conditions. And there are a number of centers in the
18 New York Metropolitan area.

19 And there's also a national program for
20 folks who responded from all over the country or who
21 might have been in New York and had moved to a new --
22 another community outside New York.

23 And that program is continuing. So I direct
24 the Queens Center in Queens, New York, which is one of
25 the clinical centers. We actively see patients. We see
26 about 20 patients a day with World Trade Center
27 exposures.

28 Q. Okay. And you mentioned NIOSH. What

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1 involvement do you have these days with NIOSH?

2 A. Well, NIOSH is the organization that
3 oversees the World Trade Center health program. So I
4 have daily interactions with them on that element. But
5 I also have in the past had research projects that they
6 funded.

7 And then they funded the training program
8 that I used to direct when I was at Mt. Sinai. And I've
9 also served for many years as a grant reviewer, and then
10 I was head of the grant review panel for a number of
11 years. You have a four-year term where you're head of
12 the grant review panel. And I serve periodically as the
13 head of grant review panels for them.

14 Q. And grant review panels would be to review
15 grant applications and determine where research funding
16 goes?

17 A. Well, for the scientific review to decide if
18 there's scientific merit. And then the funding
19 decisions are, thankfully, not made by us. But we
20 decide if there is scientific merit to what someone is
21 proposing and then --

22 Q. Okay. Because Dr. Cameron, we saw
23 yesterday, has a big grant application he's waiting to
24 hear back on. I just wanted to know if --

25 A. I have nothing to do with that review.

26 Q. Now, in your clinical practice, do you see
27 and treat people with mesothelioma?

28 A. Yes.

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1 Q. Okay. Tell us about how you as an
2 occupational medicine doctor are involved in
3 mesothelioma patients.

4 A. Well, I am not an oncologist and I'm not a
5 thoracic surgeon. So I don't give them the medications
6 to treat them, like Dr. Cameron is a thoracic surgeon.
7 So I don't do similar work to what he does, but I will
8 often -- I see patients. They come to see me on a
9 regular basis. I monitor their health, monitor a CAT
10 scan.

11 In fact, right now one of my patients is
12 suffering from mesothelioma who came to me with
13 worsening symptoms. And in -- he's hospitalized right
14 now with mesothelioma. And so he came and we got him in
15 to get the formal diagnosis of someone who had asbestos
16 exposure.

17 And so I see patients not because it's such
18 a rare cancer. I don't see that many patients who come
19 to me where I'm the one who is the cog that sets them on
20 the diagnostic pathway, but there have been cases like
21 that over the years.

22 Q. And is evaluating the potential hazards of
23 various exposure scenarios part of what you do in your
24 day-to-day practice?

25 A. Yes.

26 Q. And in making those evaluations, do you
27 consider your clinical experience, like you've
28 described?

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1 A. Yes.

2 Q. And do you also consider patients that come
3 to you in the context of medicolegal consulting like
4 what we're doing here today?

5 A. Yes.

6 Q. And how many people with mesothelioma have
7 you evaluated that have been exposed to cosmetic talc?

8 A. You know, I -- it's --

9 MR. CALFO: I'm going to object, Your Honor. That
10 calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: There are about 41 cases of
13 individuals that I've reviewed records or have in some
14 cases had the opportunity to evaluate.

15 Q. BY MR. STUEMKE: Okay. And would those
16 evaluations include learning about their occupational
17 and environmental history of exposures?

18 A. Yes.

19 Q. And for about how many of those people with
20 mesothelioma with a history of cosmetic talc use was
21 cosmetic talc their only known exposure to asbestos?

22 MR. CALFO: Your Honor, objection. We're getting
23 beyond this case. Irrelevant.

24 THE COURT: Overruled. It goes to her experience.

25 THE WITNESS: About 75 to 80 percent of them there
26 was no other competing cause. Or there was no other
27 potential exposure.

28 Q. BY MR. STUEMKE: Okay. So for about

1 three-quarters or more of the mesothelioma cases that
2 you've seen with a history of cosmetic talc exposure,
3 that's been their only identified exposure to asbestos?

4 MR. CALFO: Same objection, Your Honor. 352 as
5 well.

6 THE COURT: Yes, I'm going to sustain it. It's a
7 little bit leading.

8 MR. STUEMKE: Okay.

9 THE COURT: It's repetitive of the answer.

10 MR. STUEMKE: I'll move along. Sorry, Your Honor.

11 Q. Now, you mentioned medicolegal consulting.
12 You've testified in cases like this before; correct?

13 A. Yes.

14 Q. And you're charging us for your time?

15 A. My health system is charging you, but yes.

16 Q. Okay. And what is -- do you have an hourly
17 rate?

18 A. Yes. It's 550 an hour.

19 Q. Okay. And, in fact, you've testified in
20 cases that I've been involved in and other lawyers in my
21 firm have been involved in; is that right?

22 A. Yes.

23 Q. How long have you been offering testimony in
24 cases involving asbestos disease?

25 A. I started around 20 years ago.

26 Q. Okay. And so that was after you had been
27 practicing occupational medicine at Mt. Sinai for a
28 number of years; fair?

1 A. Correct.

2 Q. Doctor, I'd ask you to only offer those
3 opinions here today that you hold to a reasonable degree
4 of medical certainty. Is that okay?

5 A. Yes.

6 Q. Is that true for any opinions you might have
7 already offered?

8 A. Yes.

9 Q. All right. What have we asked you to do in
10 connection with Mrs. Herford's case?

11 A. I was asked to review her medical records
12 and her deposition transcripts related to her exposures.

13 Q. And did we provide you additional materials
14 to review as well?

15 A. Yes.

16 Q. What types of materials have you considered
17 in this case?

18 A. With respect to her medical records and her
19 deposition transcripts?

20 Q. And her exposures.

21 A. And exposures. Well, that was -- she
22 described them pretty well in her deposition
23 transcripts.

24 Q. All right. Have you reviewed testing
25 reports? We've heard from Dr. Compton and Dr. Longo.
26 Did we provide you their reports to consider as well?

27 A. Yes.

28 Q. Have you reviewed any other documents

1 relating to asbestos and cosmetic talcum powder
2 products?

3 A. Yes, I also saw Dr. Gordon's report.

4 Q. And Dr. Gordon's report -- what are you
5 referring to?

6 A. Dr. Gordon had evaluated Mrs. Herford's
7 lymph node tissue.

8 Q. Oh, the report where he found the -- where
9 he found the tremolite fibers in her lymph node
10 digestion?

11 A. Correct.

12 Q. Okay. Dr. Moline, based on your review of
13 the medical records and testimony in this case, what
14 disease is Mrs. Herford suffering from?

15 A. She has malignant mesothelioma.

16 Q. And from your perspective in occupational
17 medicine, can you tell us what mesothelioma is?

18 A. Mesothelioma is a cancer that arises in the
19 chest cavity. It can occur in other parts of the body
20 as well. But in Mrs. Herford's case it's in her chest
21 cavity.

22 Q. And within the field of epidemiology, is
23 there a concept of signal tumor, or a sentinel tumor?

24 A. Yes.

25 Q. What is that?

26 A. Sentinel tumor is when someone develops a
27 particular disease or a tumor, then you look to see
28 where they had a specific exposure because it is so

1 associated with that one particular exposure.

2 Q. Okay. And is mesothelioma considered a
3 signal tumor?

4 A. Yes.

5 Q. And what is it a signal of?

6 A. Asbestos exposure.

7 Q. Is mesothelioma always fatal?

8 A. Yes.

9 Q. And in cases where mesothelioma is fatal,
10 can you tell us the ways in which it actually causes
11 death?

12 A. Mesothelioma is a tumor that acts somewhat
13 differently from other cancers in that -- I'm just going
14 to pause for a second.

15 Some other tumors, as they become more
16 advanced they spread throughout the entire body.
17 Mesothelioma typically spreads more locally. So what
18 can happen is it spreads from the lining of the lung
19 into the lung itself through the chest wall, surrounds
20 the heart, can actually invade into the heart muscle
21 itself.

22 It can certainly get into the lymph nodes,
23 in the chest. And I believe it already had at the time
24 of Mrs. Herford's diagnosis. It can also spread through
25 other parts. It can go through the diaphragm into the
26 abdomen.

27 There can be distant metastases, which means
28 it can go to the brain, it goes to the bone, it can go

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1 to other areas. Typically it goes to the ribs because
2 those are adjacent to where the tumor is growing.

3 What happens is that folks become -- they're
4 not able to get enough oxygen as the tumor replaces
5 their lung tissue. So the lung can't do what it's
6 supposed to do, which is provide oxygen to tissue.

7 Also the tumors cause various chemicals to
8 be released -- things called tumor necrosis factor --
9 that are responsible for some of the symptoms that
10 people get, which is decreased appetite and fatigue, and
11 eventually other organs fail within the body.

12 Q. And typically when a mesothelioma patient is
13 going through that process, what types of pain levels
14 are we talking about?

15 A. The pain can be excruciating. As the tumor
16 grows locally, it grows -- our chest cavity is a bony,
17 enclosed space. So it grows outward and it grows
18 inward. But there are a lot of nerve endings between
19 the nerves and the muscles, and it can be -- as the
20 tumor grows into the nerves, it can be extraordinarily
21 painful.

22 So the pain levels can be in some cases
23 uncontrollable.

24 Q. Okay. And you mean uncontrollable even with
25 medications?

26 A. Even with medication.

27 Q. Let me turn our attention from that. The
28 jury has heard a lot in this case about asbestos. I

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1 want to talk to you as an occupational medicine doctor
2 about what asbestos is from your perspective.

3 First, do you rely on medical literature
4 relating to asbestos and its ability to cause disease?

5 A. Yes.

6 Q. And first, in the medical literature that
7 you rely on, have you seen it indicated that before one
8 can decide that asbestos, from a medical standpoint, has
9 caused disease that first a geologist needs to determine
10 whether it formed in an asbestiform habit? Have you
11 seen statements like that?

12 MR. CALFO: Objection, Your Honor. This is beyond
13 the scope of this witness's expertise.

14 THE COURT: Sustained.

15 Q. BY MR. STUERMKE: Now, you said that you've
16 read literature establishing that asbestos causes
17 disease; correct?

18 A. Yes.

19 Q. Does that include literature establishing
20 that asbestos exposure causes mesothelioma?

21 A. Yes.

22 Q. And can you tell us some of the ways in
23 which doctors and scientists have written in the medical
24 letter that -- ways in which they've established that
25 asbestos can cause mesothelioma? Some of the things
26 that they've considered.

27 A. They've looked at the exposure scenarios.
28 They've looked at how long someone has been exposed,

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1 when they started having the exposure to when they
2 developed the disease, the different -- what they were
3 doing, whether they were working with the product,
4 whether they were near other people who were working
5 with the product, whether it was something they were
6 doing at home, whether it was someone who was bringing
7 asbestos-laden clothes home, for example, and then the
8 people dealing with the clothes developed disease.

9 So those are some of the things that folks
10 have looked at. They've looked at when there have been
11 measurements, what measurements have been associated.

12 Q. Measurements like air measurements that an
13 industrial hygienist might take, for instance?

14 A. Yes.

15 Q. And you are the first witness talking about
16 it from this perspective. How are measurements like
17 that reported in terms of how much asbestos is present
18 in the air?

19 A. It's typically a measurement in fibers per
20 cubic centimeter of air.

21 Q. Okay. And can you explain to the jury what
22 that concept is, what that means?

23 A. Sure. It's a quantification of how many
24 fibers are actually measured within a given volume of
25 air. So it's expressed in fibers per cubic centimeter.
26 A cubic centimeter is about the size of a sugar cube.
27 So how many fibers you would have within that finite
28 period of volume. And that's how it's typically

1 measured.

2 Q. Okay. And there are multiple different
3 fiber types of asbestos, as we've all learned in this
4 case; correct?

5 A. Yes.

6 Q. Do all fiber types of asbestos cause
7 mesothelioma?

8 A. They do.

9 Q. Is that generally accepted?

10 A. Yes.

11 Q. Are you familiar with the fact that OSHA
12 regulates permissible levels of exposure to asbestos in
13 a workplace?

14 A. Yes.

15 Q. And are there certain set levels of exposure
16 or of airborne concentrations of asbestos in fibers
17 per cc that they allow in a workplace?

18 A. Yes.

19 Q. And first, are those levels considered safe?

20 A. No.

21 Q. Explain to us what that means, that there
22 are allowed levels in a workplace but they're not
23 considered safe.

24 A. A number of factors go into an OSHA
25 permissible limit, or a PEL, which is whether -- how
26 feasible it is to have a measurement. The goal is to
27 have a level that will protect most people, but it's not
28 expected to be comprehensive and protect all people.

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1 But most people, if they have an exposure below that
2 level, are felt to be at decreased risk of developing
3 disease.

4 Q. Okay. And in your career, have you been
5 called on to -- similar to the lead situation that we
6 described earlier, have you been called on to evaluate
7 whether there are safe levels of -- whether there are
8 permissible levels of asbestos present in various
9 scenarios?

10 A. Yes.

11 Q. And not in terms of taking the measurement.

12 A. Right. I don't do the measurements myself.

13 Q. And when you've done that, have you ever --
14 have you consulted with industrial hygienists on
15 occasion?

16 A. Yes.

17 Q. And have they taken measurements that you've
18 then interpreted?

19 A. Yes.

20 Q. And have you ever consulted a geologist in
21 terms of evaluating the presence of asbestos in
22 determining whether there's a hazard?

23 MR. CALFO: Objection, Your Honor. Beyond the
24 scope of this witness.

25 THE COURT: Overruled.

26 THE WITNESS: I have never consulted a geologist.

27 Q. BY MR. STUEMKE: All right. And has the
28 medical literature that you've reviewed -- strike that.

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1 Do you have an opinion regarding what
2 properties of asbestos fibers there are that cause them
3 to be hazardous to humans in terms of the disease
4 mesothelioma?

5 MR. MASAITIS: Objection. Lacks foundation.

6 THE COURT: I'm not so sure I understand the
7 question.

8 MR. STUEMKE: In that case I think I probably
9 ought to withdraw the question and ask a better
10 question.

11 Q. Do asbestos fibers cause mesothelioma when
12 they get to the target schedules for that disease?

13 A. Yes.

14 Q. Do asbestos fibers have certain properties
15 that allow them to be inhaled and get to those target
16 cells?

17 A. Yes.

18 Q. Can you describe some of those properties
19 for us?

20 A. Asbestos is a fiber that will become
21 airborne, and it can be breathed in. It does not have
22 what we call onion properties, meaning it doesn't let
23 you know it's there. It doesn't irritate your eyes. It
24 doesn't irritate your throat. It doesn't cause a cough.
25 So people can be exposed and not have any immediate
26 health effects from the exposure, so they don't
27 necessarily run out of the room or stop the exposure.

28 But the properties that -- from an

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1 occupational medicine standpoint that are most important
2 are that the fibers are very, very small and they can
3 penetrate, get into the body, get deep into the lung.
4 They can get -- travel to various parts of the body,
5 whether it's, in this case, to the mesothelial area to
6 the pleural space and exert their damaging effects.

7 Q. And how common is the disease mesothelioma?
8 I think you mentioned it's a rare disease. But what
9 kind of an incidence rate are we talking about with this
10 disease?

11 A. It's exceedingly rare, thankfully. There
12 are about 4,000 cases in the United States per year.

13 Q. Okay. And we heard from Dr. Brody the
14 concept of latency. From your standpoint as an
15 occupational medicine doctor assessing exposures and
16 disease, tell us about latency; what that means.

17 A. So latency in -- with respect to
18 asbestos-related disease is that it takes time for the
19 effects of asbestos to become manifest in the body. And
20 that latency period is actually measured on the order of
21 years. In many cases, decades.

22 Where, you know, if you're exposed to
23 someone who has the chicken pox or a cold, the latency
24 period is called the incubation period. It's one -- it
25 can be days or weeks. With asbestos-related diseases,
26 it can be 30, 40, 50 years from when someone is first
27 exposed to when they develop disease.

28 Q. Okay. And is there a recognition within the

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1 field of occupational medicine of whether there's a safe
2 level of exposure to asbestos or how much asbestos it
3 takes to cause mesothelioma?

4 A. There's not considered a safe level of
5 exposure to asbestos. It's, you know, widely regarded
6 as there is no known safe level of asbestos exposure
7 that you would want people exposed to. So that's been
8 widely accepted.

9 Q. Okay. And is there a particular length of
10 exposure that's understood to be required to cause
11 mesothelioma?

12 A. Well, it's one of those cases where there
13 have been cases reported from someone who was exposed
14 for very short periods of time, like to the point of one
15 or two days, or someone who was exposed over one summer,
16 had no other exposure except that one summer's worth of
17 work, and then developed mesothelioma many years later,
18 to people who work with it every day or have exposures
19 to it every day from using products containing asbestos
20 that develop mesothelioma.

21 And it is hard to predict. So there's a
22 wide range, but there is an acceptance that low levels
23 of exposure can lead to mesothelioma.

24 Q. And is there a relationship between how much
25 exposure to asbestos somebody has and their likelihood
26 of getting mesothelioma?

27 A. Well, there's a medical term for that, which
28 is "dose-response," which is the more you're exposed to

1 something, the more likely you are to develop it. And
2 there is a dose-response with mesothelioma, in that
3 folks who worked with very high concentrations of
4 asbestos day in and day out, people like the
5 construction workers, insulators, have higher rates of
6 mesothelioma than other individuals who may have worked
7 with it more sporadically.

8 So you do see a dose-response in that sense,
9 but we also see folks at the very low end of the
10 spectrum.

11 Q. Okay. And in a person that has asbestos
12 exposure and later develops mesothelioma, which asbestos
13 exposures contribute to cause that person's disease?

14 A. There's no way of separating them. So
15 you're -- the accepted way of looking at it is it's the
16 cumulative exposure that someone has had that leads to
17 the development of mesothelioma. So you add all those
18 exposures up, all those daily exposures, all those --
19 whether it's once-a-month exposures, whatever the
20 cumulative exposures are.

21 Q. Okay. And has there been -- the causal link
22 between asbestos exposure and mesothelioma, has that
23 been established by epidemiological studies?

24 A. Yes. There have been cases -- there was --
25 when we look back at the medical literature, they were
26 talking about the health effects of asbestos in 1898,
27 folks talking about lung disease. There were cases of
28 lung cancer in the 1930s, 1940s.

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1 In 1960 there were 33 cases. So it was
2 actually a case series that established that
3 mesothelioma was associated with mesothelioma [sic].

4 Q. That asbestos exposure was --

5 A. I'm sorry. That asbestos exposure was
6 associated with mesothelioma.

7 Q. And so you just kind of outlined for us some
8 of the development of knowledge of the hazards. Let me
9 kind of pinpoint some of those things.

10 When was it reported that asbestos could
11 cause fatal disease?

12 A. Well, at the turn of the 20th Century in
13 England, for example, they noted that folks in the
14 asbestos trades died very young and they actually
15 couldn't get life insurance. And so they -- it was
16 known back in the early part of the 20th Century that
17 asbestos exposure caused lung cancer disease.

18 In the 1930s and '40s, there began -- as
19 more understanding about cancer became -- it was
20 somewhat in its infancy. There were cases where folks
21 with asbestos exposure were determined to have lung
22 cancer. And then in 1955, I believe, a researcher from
23 England made a connection between asbestos exposure and
24 lung cancer. That was followed by a number of other
25 papers. And then in 1960 was a paper with the 33 cases
26 of mesothelioma by a South African researcher.

27 And then over the next few years, there was
28 a mushrooming of papers that outlined the hazards and

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1 the numbers of diseases or the numbers of individuals
2 with diseases and the scenarios where people developed
3 mesothelioma.

4 Q. Okay. Is it fair to say that the -- in the
5 1960s the attention being paid to asbestos disease in
6 the medical literature was mushrooming?

7 A. Yes.

8 Q. Okay. I think that's the first time I've
9 ever asked about mushrooming. But that's a fair
10 analogy?

11 A. Yes.

12 Q. And you mentioned the South African
13 researcher. We heard from Dr. Brody that that was
14 Dr. Wagner in 1960 that established mesothelioma was
15 caused by asbestos exposure; correct?

16 A. Yes.

17 Q. You said that was a case series. Within the
18 field of epidemiology, are there various types of
19 studies?

20 A. There are.

21 Q. And is a case series an epidemiological
22 study?

23 A. It is a type. And when you have a sentinel
24 disease, it can be -- it's given more of a weighting
25 than when you're doing exploratory.

26 Q. Okay. And you indicated that you've so far
27 seen -- about three-quarters of your 41 cases of people
28 with cosmetic talc exposure, mesothelioma, about

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1 three-quarters of them have had that as their only
2 exposure to asbestos --

3 MR. CALFO: I object. This is 352.

4 THE COURT: Yes.

5 MR. CALFO: He's having mini trials on whatever it
6 is that he's --

7 THE COURT: We need to move along.

8 MR. CALFO: Move to strike, Your Honor.

9 THE COURT: We didn't get an answer.

10 Q. BY MR. STUEMKE: Are there generally
11 accepted criteria within the field of occupational
12 medicine by which you can examine a person, consider a
13 person's disease, and attribute that disease to certain
14 causal agents?

15 A. Yes.

16 Q. Okay. And with respect to the disease
17 mesothelioma, how would one go about attributing a
18 mesothelioma to a certain exposure?

19 A. Well, you would look at a certain exposure
20 or exposures, or an exposure scenario, and you would say
21 did they have exposure? Did they have exposure
22 sufficiently long enough? Because we never see folks
23 developing mesothelioma immediately after the exposure,
24 so has time elapsed. Are there other factors or other
25 exposures that they might have had that could contribute
26 or have caused the disease?

27 Has it been reported that this particular
28 substance causes the disease is one of the first

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1 questions you ask. And in the case of asbestos and
2 mesothelioma, that's been well established.

3 Q. Okay. Does one have to exclude all other
4 possible causes of a disease in order to attribute it to
5 one cause?

6 A. No. You have to factor in all the different
7 exposures --

8 Q. Okay.

9 A. -- and all the different causes. Just
10 because there might be two substances or two factors
11 that cause a disease doesn't negate the other
12 exposure --

13 Q. Okay.

14 A. -- completely.

15 Q. Now, I want to talk specifically about
16 asbestos and the disease mesothelioma. First, you
17 indicated that asbestos exposure is very well
18 established as a cause of mesothelioma; correct?

19 A. Yes.

20 Q. Is there any recognized substance or type of
21 exposure to something else that could negate the causal
22 role of decades of asbestos exposure in a person that
23 develops mesothelioma?

24 A. Well, there's nothing --

25 MR. CALFO: Objection, Your Honor. Vague and
26 ambiguous. Incomprehensible.

27 THE COURT: I don't understand the question
28 either.

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1 MR. MASAITIS: Incomplete hypothetical as well,
2 Your Honor.

3 MR. STUEMKE: I'll try to make it simpler.

4 Q. Dr. Moline, is it generally accepted that
5 radiation can cause mesothelioma?

6 A. There's a body of literature that has shown
7 that particularly in some types of the administration of
8 radiation, particularly this type of radiation called
9 mantle radiation, which is when you treat people with
10 Hodgkin's lymphoma, and possibly with other types of
11 radiation, that there is an association between folks
12 receiving radiation and mesothelioma.

13 Q. Okay. Is the evidence for radiation as a
14 cause of mesothelioma stronger or weaker than it is with
15 respect to whether asbestos exposure causes
16 mesothelioma?

17 MR. MASAITIS: Objection, Your Honor. Beyond the
18 witness' expertise. Vague.

19 THE COURT: Overruled.

20 THE WITNESS: Well, we're looking at almost
21 60 years of a very clear association in the medical
22 literature and thousands of papers that have shown
23 asbestos causes mesothelioma. There are a handful of
24 papers in individuals who have received radiation who
25 have developed mesothelioma.

26 But none of those papers that have looked --
27 because it's such a rare tumor, they've looked at
28 thousands of individuals who have received radiation

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1 treatment, and they don't have an occupational or
2 environmental history. So we don't know if in those
3 folks who developed the mesothelioma from radiation in
4 these handful of cases, or in these handful of studies,
5 whether they also had asbestos exposure.

6 So there's far more literature and far more
7 evidence regarding the connection between
8 mesothelioma -- between asbestos and mesothelioma than
9 there is between radiation.

10 Q. BY MR. STUEMKE: Have you ever seen a paper
11 that says if you have a person with decades of daily
12 exposure to asbestos who after an appropriate latency
13 period develops mesothelioma -- have you ever seen a
14 paper describing a person like that but saying this
15 person later got therapeutic radiation, developed
16 mesothelioma; therefore, the decades of daily asbestos
17 exposure played no role in causing her disease?

18 MR. CALFO: Objection, Your Honor. Improper
19 hypothetical.

20 THE COURT: Sustained.

21 Q. BY MR. STUEMKE: Have you ever seen a paper
22 in peer-reviewed medical literature that states asbestos
23 exposure can be ignored with respect to causing an
24 individual's mesothelioma if that individual had
25 radiation therapy?

26 A. No.

27 Q. And in terms of attributing mesothelioma
28 specifically to asbestos exposure, are there generally

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1 accepted criteria that are recognized in doing that?

2 A. Yes.

3 Q. Tell us about those.

4 A. Well, there are actually called the Helsinki
5 criteria, which was a group of asbestos investigators or
6 scientists got together in Helsinki, Finland, and came
7 up with a consensus statement in 1997 that's been
8 updated in -- I believe it was in 2014 -- regarding what
9 is required for attribution of asbestos exposure for the
10 asbestos-related diseases, including mesothelioma.

11 Q. And what would you look for using the
12 Helsinki criteria in order to attribute a mesothelioma
13 to asbestos exposure? And if you wouldn't mind, would
14 you mind writing those on the board?

15 A. Okay. Asking a left-handed person to write
16 is always a challenge.

17 So one of the things is latency. One of
18 them is exposure to asbestos. And they talk about low
19 levels are associated.

20 Q. Does the Helsinki criteria mention the
21 importance of biological or pathological findings of
22 asbestos in tissue?

23 A. They say when it's available that it can add
24 further information. They do not say it's necessary.

25 Q. Okay.

26 A. It's rarely -- it's rarely done.

27 Q. Okay.

28 A. They do talk about looking at tissue.

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1 Particularly they go into it in a little more depth in
2 the updated Helsinki criteria.

3 Q. Okay.

4 A. So if the tissue levels -- if available.

5 Q. Okay. And does the Helsinki criteria refer
6 to what you do as an occupational medicine doctor in
7 terms of an occupational history?

8 A. They talk about a detailed history as being
9 one of the factors, yes.

10 Q. Thank you.

11 Doctor, have you studied or have you
12 reviewed the medical literature relating to talc and its
13 association with disease?

14 A. Yes.

15 Q. And first, have there been reports in the
16 literature about talc occurring in association with
17 asbestos?

18 A. Yes.

19 Q. And how far back does that go -- does that
20 relationship between talc and asbestos go in the medical
21 literature?

22 A. I believe it was first mentioned in 1933.

23 Q. Okay.

24 A. It was often mentioned again in the late
25 '40s. Or actually I think there was a case of an
26 individual who had lung disease in the '40s. Then there
27 were a number of cases, or a number of papers in the
28 '50s, '60s that talked about talc exposure.

1 Q. Okay. And have there been specific
2 articles -- strike that.

3 Let me ask it this way. Do you recall an
4 article showing that cosmetic talc itself is capable of
5 causing lung disease?

6 A. Yes, that was, I think, a study by Millman
7 in the 1940s of a talc worker who developed lung
8 disease.

9 Q. Okay. And has it been shown in the
10 literature you've reviewed that asbestos can be present
11 in consumer talcum powder products?

12 A. Yes.

13 Q. Okay. And when does that type of literature
14 go back to that you've seen?

15 MR. CALFO: Your Honor, I'm going to object, to
16 the extent we're talking about literature. We don't
17 know what type of literature. Vague and ambiguous.

18 THE COURT: Overruled. Why don't we lay a little
19 bit better foundation and she can identify it.

20 MR. STUEMKE: Okay.

21 Q. Have you reviewed studies that have reported
22 asbestos or the possibility of asbestos being present in
23 cosmetic talcum powder products?

24 A. Yes.

25 Q. Can you tell us about some of those?

26 MR. MASAITIS: Objection, Your Honor, to the
27 extent we're talking about geological type of papers or
28 something outside of this expert's expertise.

1 THE COURT: Overruled.

2 THE WITNESS: So with respect to the medical
3 literature or the occupational health literature, there
4 have been a number of studies. It was mentioned in 1968
5 by author Cralley, who looked at talc, who said --
6 talking about health effects of talcum powder.

7 And then researchers at Mt. Sinai, at the
8 National Institute of Environmental Health Sciences,
9 which is one of the bureaus of the National Institutes
10 of Health, in 1973 talked about the health effects of
11 cosmetic talc.

12 It was also people that were at Mt. Sinai
13 before my time looked at cosmetic talc in the 1970s,
14 Rohl and Langer.

15 So those are some of the earlier studies
16 that appeared in the occupational health literature.

17 Q. Okay. And you mentioned Rohl and Langer.
18 Did either of those investigators speak to -- or write
19 about, I should say -- write about the amount of
20 exposure to asbestos that could occur even if a talcum
21 powder product had been examined by X-ray diffraction?

22 MR. CALFO: Objection, Your Honor.

23 THE COURT: I'm going to sustain that objection.
24 It really goes beyond the scope of her background,
25 experience.

26 MR. STUEMKE: Okay. I apologize, Your Honor.

27 Q. Dr. Moline, I think the jury is going to
28 hear a lot about this state-of-the-art stuff next week,

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1 so I'm trying to kind of cut that short.

2 Let me just ask you this. In terms of as an
3 occupational medicine physician evaluating whether a
4 person can be exposed to biologically significant
5 amounts of asbestos from cosmetic talcum powder, have
6 you formed an opinion on that?

7 A. Yes.

8 Q. And what is your opinion?

9 MR. CALFO: Objection, Your Honor. Kennemur. No
10 factual foundation for this witness.

11 THE COURT: Overruled.

12 THE WITNESS: My opinion is that they can be
13 exposed to levels of asbestos from a cosmetic talc. And
14 it comes from an understanding of both the descriptions
15 in the literature of the hundreds of thousands of fibers
16 that have been described -- of -- asbestos fibers that
17 were described, for example, by Mattenklott or and in
18 Rohl and Langer, or maybe just Rohl. They talked about
19 millions of fibers being --

20 MR. CALFO: Your Honor, respectfully, this is
21 beyond Kennemur, this witness's deposition and Kennemur.

22 THE COURT: Let's take our morning recess and see
23 what we can come up with. We'll be in recess for
24 15 minutes. Gather in the hallway at 10 minutes to
25 11:00. Actually make it five minutes to 11.

26 (At 10:35 a.m. the following
27 proceedings were held in open court
28 out of the presence of the jury:)

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1 THE COURT: Illuminate me on what your objection
2 is, Mr. Calfo.

3 MR. CALFO: Your Honor, she did not provide any
4 exposure assessment in terms of opinions with respect to
5 Mrs. Herford. And I think what they're trying to do
6 now, because she's testified, I do not know -- I only
7 know there's potential exposure. And I don't know what
8 the exposure was.

9 That's what her deposition testimony --

10 MR. STUEMKE: Well, let's talk page and line if
11 you're going to be representing what the testimony is.

12 MR. CALFO: Sure.

13 MR. STUEMKE: Because that's not an accurate,
14 entire assessment of her testimony.

15 THE COURT: I'll get to the plaintiffs' position
16 in a moment.

17 MR. CALFO: Your Honor, she testified at Page 59,
18 lines 8 through 12 of her deposition, she performed no
19 analysis in an effort to quantify the amount of asbestos
20 that she is assuming Mrs. Herford may have been exposed
21 to through her use of cosmetic talc products.

22 That's very important, Page 59, lines 8
23 through 12.

24 And the question was:

25 "QUESTION: You didn't perform any
26 analysis to quantify the amount of asbestos
27 that you believe Mrs. Herford was exposed to
28 through her use of cosmetic talc product;

1 true?

2 "ANSWER: Correct."

3 Now what they're trying to do is backdoor
4 some exposure and get it in front of the jury, Your
5 Honor. And she's going to render an opinion when she
6 has done no analysis. She's testified she's done no
7 analysis. And it's a big problem.

8 THE COURT: Refresh my memory. What was the
9 nature of the question? The nature of the question that
10 Mr. Stuemke asked.

11 MR. CALFO: He was asking -- go ahead,
12 Mr. Stuemke.

13 MR. STUEMKE: I asked her whether she had an
14 opinion whether people could be exposed to asbestos from
15 biologically significant levels of asbestos from
16 consuming talcum powders, I believe, which is not
17 specific to Mrs. Herford, which is not any kind of a
18 dose calculation, which is what those questions in
19 deposition were about.

20 As Your Honor well knows, in California
21 there is no requirement for a dose quantification for a
22 plaintiff in order for there to be an assessment of
23 causation. Nor does she have to attempt to make such a
24 quantification.

25 However, what we are doing here is
26 establishing that there are recognized sources of
27 information that establish that there are significant
28 levels of exposure to asbestos caused by talcum powder

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1 use. That is different than whether she has attempted
2 to quantify the total amount of fibers Mrs. Herford
3 herself was exposed to.

4 So we are going to be -- and we're leading
5 into this now. We are going to be offering testimony
6 from her about exposure levels that can occur when an
7 individual uses consumer talcum powder products.

8 This is -- and one of the papers she's going
9 to rely on is Dr. Gordon's paper in 2014, where they
10 actually measured exposure levels that were created by
11 the use of cosmetic talcum powder products in the same
12 way that Mrs. Herford used hers.

13 So, no, we are not offering testimony as to
14 the total amount of asbestos Mrs. Herford was exposed to
15 from any product. That is what Dr. Moline was talking
16 about at deposition that she hasn't attempted to
17 quantify. But she was asked many questions in
18 deposition about her exposure opinions qualitatively,
19 and that's what we're talking about.

20 And she was asked questions about her
21 reliance. And that is part of what we're talking about.

22 So there's no issue of a quantification that
23 she's doing or needs to have done. She's not offering
24 opinions that were not disclosed in the 2034 or in
25 deposition.

26 MR. MASAITIS: May I be heard, Your Honor?

27 THE COURT: Let Mr. Calfo respond.

28 MR. CALFO: Well, Your Honor, she told us she

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1 performed no analysis, no analysis. Otherwise, we would
2 have followed up, number one.

3 Number two, Dr. Gordon was on the stand. He
4 could have testified about his own studies.

5 Go ahead, Mr. Masaitis.

6 MR. MASAITIS: And then, Your Honor, the other
7 issue here is a severe prejudice issue under 352 because
8 she's going to be talking about quantification from
9 other studies of asbestos in other products that have
10 nothing to do with the products at issue in this case.
11 And the effort here is to acquaint them and say, well,
12 if this other product, Colgate, this Colgate product,
13 Cashmere Bouquet, has some amount of asbestos in it,
14 then there must be asbestos in the J&J products.
15 There's nothing connecting the two.

16 And so her discussion of those other studies
17 and amounts of asbestos and what was respirable in those
18 studies bears no relevance to a case here that is
19 exclusively about Johnson & Johnson products. And
20 there's no foundation between similar concentrations in
21 the product at issue here.

22 MR. CALFO: And, Your Honor, under Sargon there's
23 too great an analytical gap here. And on top of it,
24 Mrs. Herford had specific testimony of how she used the
25 product, how long she used the product, how long she put
26 it on herself. There's just too great an analytical
27 gap.

28 MR. STUEMKE: Your Honor, I need to quickly

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1 correct -- we'll just say a lack of clarity in the
2 representations here.

3 She was asked specifically in her deposition
4 by a defense lawyer:

5 "QUESTION: One of the things you used
6 the Gordon paper for is the fact that it
7 shows if there is asbestos contamination in
8 a particular talc product, it is released in
9 the air during use; is that fair?

10 "ANSWER: It is released and released at
11 levels that are capable of causing disease,
12 yes."

13 This is a 441-page deposition that she gave
14 over multiple days. For them to take one isolated
15 quotation out of context, dramatically misapply it to
16 the question that's being asked here, and then to argue
17 that she should be precluded from offering any of this
18 kind of testimony is exactly the subject of their motion
19 in limine that we argued at considerable length and that
20 Your Honor correctly ruled that, as an occupational
21 medicine doctor, this is exactly the kind of information
22 she can rely upon in rendering a causation opinion in
23 Mrs. Herford's case.

24 Now, the limitation on that that we are
25 going to respect and abide by was that she is not going
26 to be permitted to offer a product-specific causation
27 opinion. Your Honor expressly indicated that she could
28 testify that -- including the bases for this, that

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1 exposure to asbestos-contaminated cosmetic talc caused
2 Mrs. Herford's disease, but that she couldn't do it
3 product-specific. A product-specific would need to be
4 done by hypothetical.

5 THE COURT: Let me just assume that she did no
6 quantification analysis or step. Assuming that the
7 question and the answer is correct, how does that --
8 what limitation does that place on her testimony?

9 MR. STUEMKE: It means that she -- it means that
10 she is not going to be able to come up here to the
11 board -- I'm sorry, Your Honor. Do you mind if I
12 approach?

13 THE COURT: Go ahead.

14 MR. STUEMKE: She is not going to be able to come
15 up here and write on the board, Mrs. Herford, dose,
16 eight fiber cc years. She's not going to be allowed to
17 do that. She hasn't performed that analysis. That's
18 the analysis she was referring to. She hasn't attempted
19 to quantify Mrs. Herford's lifetime dose of exposure to
20 asbestos.

21 That is not what we are asking her about.
22 We're asking her about exposure levels that have been
23 documented in the scientific literature that she relies
24 on as an occupational medicine doctor, which she's
25 already described relying on in other contexts. This is
26 what she does.

27 THE COURT: So her answer to the question in the
28 deposition was she did no study on the quantification of

1 the doses that Mrs. Herford was exposed to.

2 MR. STUEMKE: That's right. She was not
3 attempting to reconstruct Mrs. Herford's lifetime dose
4 of exposure to asbestos.

5 THE COURT: What do you want to ask her about
6 that? What's relevant?

7 MR. STUEMKE: What we're driving at is what are
8 the amounts of asbestos that have been documented to be
9 released from consumer talcum powder products like those
10 at issue here. That's what she's going to be offering
11 opinions --

12 THE COURT: The general population?

13 MR. STUEMKE: Yes. Not specific to Mrs. Herford.

14 MR. MASAITIS: Your Honor, it's really the other
15 products, other mines' motions in limine that's more
16 relevant here. And that's one that Your Honor deferred
17 until you saw how that kind of evidence was going to
18 come in.

19 And what's happening here is that evidence
20 about a different product, different constituents,
21 all -- an entirely different story. The Cashmere
22 Bouquet products mined from different mines that are at
23 issue here --

24 THE COURT: Is that what this Langer --

25 MR. MASAITIS: It's the Gordon article.

26 THE COURT: Is that what the Gordon article is
27 about?

28 MR. MASAITIS: Yes.

1 MR. STUEMKE: So let me make it clear. The Gordon
2 article, as Dr. Gordon described in some level of
3 detail, involved two aspects. There was the product
4 testing aspect in which they examined dozens of bottles
5 of Cashmere Bouquet talcum powder products and they
6 found asbestos in each one.

7 And then there was a separate exposure
8 scenario study that was done that's reported on. And
9 what she's going to rely on is the portion of that
10 exposure study that was done where they used a shaker
11 container like those that Johnson's products were in and
12 the amount of asbestos exposure that was measured from
13 using those shaker containers.

14 THE COURT: And whose product was in the shaker
15 containers?

16 MR. STUEMKE: That was Colgate's Cashmere Bouquet
17 product. And she's also going to rely on the average --
18 in order to relate that to the Johnson's baby powder
19 product, she's going to rely on the fact that the
20 average asbestos fibers per gram of the Colgate Cashmere
21 Bouquet product, as measured by Dr. Gordon, was about
22 40,000 asbestos fibers per gram, whereas the Johnson &
23 Johnson's baby powder, as measured by Dr. Longo, as he
24 testified yesterday and which is in evidence in this
25 case -- the average on that works out to be about -- if
26 you throw out the high outlier for Dr. Longo even and
27 you count all nondetects as being absolute zeros, the
28 average fibers per gram of Dr. Longo is about a quarter

1 of a million fibers per gram.

2 Now, she's not going to be saying that
3 therefore Johnson & Johnson causes more exposure than
4 Colgate. What she's going to be saying is that I'm
5 making a conservative estimate of the exposure levels
6 generated by using this type of a product as reported in
7 the medical and scientific literature, which is part of
8 the wheelhouse of occupational medicine.

9 THE COURT: I tend to agree with Mr. Masaitis that
10 I don't think it's relevant or worth our time to hear
11 testimony comparing an analysis to the Colgate-Palmolive
12 product and then try to compare that to the Johnson &
13 Johnson product.

14 I can see her being able to testify about
15 studies that were done on the Johnson & Johnson products
16 and whether or not those -- what those quantifications
17 were as far as fibers per square -- per cubic
18 centimeter.

19 But I don't see how we get into what anybody
20 did with respect to Cashmere Bouquet or the products of
21 any other manufacturer of talcum powder.

22 MR. STUEMK: Well, Your Honor, I can lay a
23 greater foundation for this. But this is really no
24 different than what is done in any case involving
25 asbestos exposure whereby when there's a study that's
26 published and it's a fiber release study from brakes,
27 well, it's not considered a threshold of reliance that
28 it has to be the same brand of brake shoe that was

1 studied in that published paper as what is being
2 evaluated in the case at issue.

3 Nor is it a requirement that it be the same
4 brand of gasket that was published about in the
5 scientific literature as what is -- in order for it to
6 be applied to an expert's opinion in a particular case.
7 The threshold issue is whether this is the type of
8 information upon which an expert may reasonably rely.

9 And this is exactly the type of information
10 on which occupational medicine doctors rely all the
11 time.

12 THE COURT: Let me just hear from Mr. Masaitis.

13 MR. MASAITIS: Thank you, Your Honor.

14 THE COURT: Do you agree on the analysis to the
15 brake linings?

16 MR. MASAITIS: Absolutely not, Your Honor. The
17 analogy attempting to be made is to known
18 asbestos-containing products. And you can analogize the
19 product that you know has 50 percent asbestos to another
20 product that you know has 50 percent asbestos.

21 Here we're talking about trace
22 contamination. And the analogy is being made to a
23 totally different product mined from different mines,
24 and that by the way was also tested differently than
25 Dr. Longo tested the product in this case.

26 So there's simply no analogy to be made.
27 There's no crossover between these different products.

28 MR. STUEMKE: Your Honor, respectfully, it's

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1 actually stronger than that because here we do have that
2 link. We have evidence of the amount of the -- the
3 relative amount of asbestos that was in the products
4 studied in the Gordon paper as being an order of
5 magnitude less than the quantity of asbestos that's been
6 found in Johnson & Johnson.

7 THE COURT: Okay.

8 MR. STUEMKER: We're not trying to multiply it.
9 We're just trying to say this was published information
10 that is of a type that she can rely upon in terms of the
11 amount of asbestos that's released by working with this
12 type of product.

13 THE COURT: I really -- I tend to think that the
14 defendants have the better argument on the comparison of
15 a product by Colgate-Palmolive and a different
16 manufacturer. And I'm going to sustain the objection
17 insofar as this witness is going to be testifying that
18 she's relying on testing a Cashmere Bouquet product that
19 was manufactured by Colgate-Palmolive.

20 I think she can testify as to what Dr. Longo
21 may have said or what other people may have said with
22 respect to the testing of the product of this --
23 manufactured, sold and distributed by Johnson & Johnson.
24 I'm just going to have to make that bright-line.

25 I frankly don't understand it myself. But I
26 will assume that the defendants will call my attention
27 to the fact when they -- the fact that they feel that
28 that bright-line is being crossed.

1 MR. CALFO: Your Honor, just so we have a
2 heads-up, Dr. Longo never testified in this courtroom to
3 250,000 fibers per cc. That was the first time I've
4 ever heard that figure, and I've been sitting here --

5 MR. STUEMKE: I didn't say that figure.

6 MR. CALFO: What figure did you say?

7 MR. STUEMKE: 250 fibers per gram.

8 MR. CALFO: Per gram. I've never heard that
9 number.

10 THE COURT: Let's stay on task.

11 MR. CALFO: You're right. Thank you, Your Honor.

12 The last thing --

13 THE COURT: Do you understand the line I am trying
14 to draw?

15 MR. STUEMKE: I'm trying to understand it. I want
16 to, obviously, be very respectful of the Court's
17 rulings. I'm trying to figure out in terms of
18 presenting this evidence where we go.

19 We have -- she can certainly testify
20 qualitatively that the exposures that would occur from
21 somebody using the consumer talcum powder products that
22 have asbestos in them is many, many orders of magnitude
23 above background. There is no question about that.

24 And she can rely on published literature
25 about that. She can rely on analogy to various types of
26 published literature about that. But for -- so we can
27 do it without the quantity -- without putting numbers on
28 the board, that's fine.

1 But the idea that because Cashmere Bouquet
2 was found to have less asbestos in it than what
3 Johnson & Johnson has been found to have in it means
4 that you can't rely on that study as even showing that
5 you have the release of asbestos fibers from this type
6 of product at orders of magnitude above background is
7 unjustified.

8 So I think if we could say that she relies
9 on studies that show the release of asbestos fibers from
10 consumer talcum powders at levels thousands of times
11 greater than background, which is what the evidence is,
12 I think we can go that route.

13 MR. MASAITIS: Your Honor, respectfully, I don't
14 believe it would respect your ruling that you just
15 issued because he's still equating a release of fibers
16 to a totally different product that is not relevant to
17 the Johnson & Johnson product here.

18 I'd also -- just to force out another issue,
19 I think we're running into, based on what Mr. Stuemke
20 just said about what's coming next, is that it sounds as
21 though the plan is to extrapolate from Dr. Longo's fiber
22 studies of a handful of containers to what a consumer
23 like Mrs. Herford would have been exposed to, that
24 there's another evidentiary gap that we discussed
25 before.

26 Dr. Longo was not allowed to extrapolate
27 beyond the findings of his own containers. And it's
28 undisputed that those containers were never used by

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1 Mrs. Herford.

2 So I think we have a couple of sort of
3 interrelated evidentiary issues here that are very
4 problematic if Dr. Moline issues opinions based on
5 assumptions related to those topics.

6 THE COURT: Tell me once again, Mr. Stuemke, what
7 is the point you want to make with this line of
8 questioning?

9 MR. STUEMKE: The point is that the type of
10 products -- the type of products that Mrs. Herford used
11 have been shown in the medical literature to release
12 asbestos fibers substantially above background. That's
13 the point.

14 And I'm --

15 THE COURT: Cosmetic?

16 MR. STUEMKE: At some point we're going to need an
17 offer of proof from Defendants that Johnson's baby
18 powder is some entirely different type of product than
19 Cashmere Bouquet, because there is no evidence of that.

20 THE COURT: Let's don't go there.

21 MR. STUEMKE: Because there is no evidence --

22 THE COURT: Let me ask you a question so I can
23 understand this.

24 You want her to testify based upon her
25 understanding of the asbestos content of talcum powder
26 in general?

27 MR. STUEMKE: She's relying on studies of
28 Johnson & Johnson's baby powder showing asbestos

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1 content. And she's going to testify about the release
2 of asbestos fibers from consumer talcum powders that
3 contain asbestos, yes.

4 THE COURT: I may not have a problem with that if
5 I understand it correctly.

6 MR. CALFO: And I understand, Your Honor. But we
7 took her deposition. We asked her at Page 86, lines 13
8 through 16:

9 "QUESTION: You defer to other experts
10 in this case as to how much asbestos, if
11 any, was in the specific Johnson & Johnson
12 products Mrs. Herford used or the other
13 products she used?"

14 And she said, yes, I defer.

15 MR. STUEMKE: That's a different question.

16 THE COURT: That can be subject of
17 cross-examination.

18 MR. CALFO: But, Your Honor, we didn't follow up
19 with her on that. If she would have said no, I want to
20 talk about the type of products Mrs. Herford used and
21 the potential exposures --

22 MR. PANATIER: She's saying she's not the one who
23 tested it, Your Honor. She's not the one who tested it.

24 THE COURT: I beg your pardon?

25 MR. PANATIER: She's saying she's not the one who
26 tested it. She can rely on the test. She had the test
27 at that time. That's all she's relying on.

28 THE COURT: If you can lay the foundation that she

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1 is relying on information -- if she is relying upon
2 analysis of Johnson & Johnson's baby powder, I think
3 that's on the permissible side of my bright-line. Now,
4 if she's not, then I think that the objection should be
5 sustained.

6 And the other aspects I think you can take
7 up in cross-examination.

8 MR. MASAITIS: Your Honor, if I can just clarify
9 one point with respect to what you just said. I think
10 that ruling is appropriate.

11 We just wanted to clarify that there are no
12 fiber release studies of Johnson & Johnson product. So
13 she can refer to Dr. Longo's study of concentration in
14 the bulk material, but she cannot extrapolate from that
15 to what fiber releases -- to respirable fibers would be
16 for that product.

17 MR. PANATIER: All she's going to say with regard
18 to that is the literature proves that if a cosmetic
19 product has asbestos in it, it can release the asbestos,
20 not what the concentration is or anything. It's a
21 friable product. It's common sense. And that's all
22 she's going to do.

23 THE COURT: We'll listen to what she has to say.
24 I can't split the hairs any more than I have.

25 MR. CALFO: Your Honor, I know we need a break.
26 But I have a major problem with what came into evidence.
27 They testified, and it was never mentioned in the
28 deposition, that there were 41 other lawsuits or

1 instances where patients had no exposure other than
2 cosmetic talc and they have mesothelioma.

3 And so what that really makes us do -- and I
4 don't have anything to do with it -- is Dr. Moline, now,
5 how are we going to dispute for each of those 41
6 patients' causation? We don't know any of those
7 patients. We don't know what they --

8 MR. MASAITIS: They're plaintiffs.

9 MR. CALFO: And they're plaintiffs. So what the
10 heck am I supposed to do with that, Your Honor? Now I
11 have 41 mini trials that we're going to have to somehow
12 get out of the jury's mind.

13 MR. STUEMKE: It's part of her expertise.

14 MR. CALFO: That was blurbed out. I objected.
15 And I think it's very surprising.

16 THE COURT: Let's take a break.

17 (At 10:59 a.m. a recess was taken.)

18 (At 11:07 a.m. the proceedings
19 resumed.)

20 THE COURT: We're ready for the jury.

21 Your last point, Mr. Calfo, I think you can
22 go into in cross-examination about the 31 [sic]
23 patients. I kind of understood that question to be
24 referring to patients that she had provided medical
25 treatment to.

26 MR. DUBIN: Your Honor, we won't argue because we
27 have to preserve it at this point. We would move for a
28 mistrial on it. As I indicated as I think this was

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1 discussed, these are -- I got it.

2 THE COURT: You can make it at the end of the day.

3 It will be deemed made --

4 MR. DUBIN: Thank you very much.

5 THE COURT: -- whenever you want to have it deemed
6 made.

7 MR. DUBIN: Thank you very much.

8 THE COURT: Okay. We're ready for the jury.

9 (At 11:11 a.m. the following
10 proceedings were held in open court
11 in the presence of the jury:)

12 THE COURT: The jury has returned.

13 You can continue, Mr. Stuemke.

14 Q. BY MR. STUEMKE: Dr. Moline, have you
15 reviewed Dr. Longo's report on asbestos in Johnson &
16 Johnson talcum powder products?

17 A. I have.

18 Q. And can you tell us what have you learned
19 from that report?

20 MR. CALFO: Objection, Your Honor. Overbroad.
21 Calls for a narrative.

22 THE COURT: Sustained.

23 Q. BY MR. STUEMKE: What did it show in terms
24 of the average asbestos content of Johnson & Johnson
25 talc?

26 MR. CALFO: Same objection, Your Honor, and
27 hearsay.

28 THE COURT: Overruled.

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1 THE WITNESS: That if you looked at the samples on
2 average, I think if you -- there was one very high. He
3 tested the various containers he received. If you
4 average all of them conservatively, I think if you
5 exclude the highest measurement, which was much higher
6 than all the others, it's about 250,000 fibers.

7 MR. CALFO: Your Honor, I move to strike. There's
8 no foundation in this courtroom to that testimony.

9 THE COURT: Overruled.

10 Q. BY MR. STUEMKE: Dr. Moline, do you know how
11 to take a series of numbers and create an average of
12 those numbers?

13 A. Yes.

14 Q. Okay. And you said that the average was
15 250,000 fibers per gram?

16 A. Yes.

17 Q. Have you reviewed published literature in
18 Johnson & Johnson's own documents pertaining to the
19 ability of cosmetic talc, if it contains asbestos, to
20 release asbestos into the air?

21 MR. CALFO: Objection, Your Honor. Kennemur. No
22 factual foundation. 352.

23 THE COURT: Overruled.

24 THE WITNESS: Yes, I have.

25 Q. BY MR. STUEMKE: Is talc a friable product?

26 A. Yes.

27 Q. What does "friable" mean?

28 A. "Friable" means it's in a condition where it

1 can become airborne.

2 Q. Okay. And as a matter of common sense, if
3 there is asbestos in a friable talcum powder product
4 that causes a dust cloud when you use it, is there going
5 to be some asbestos in that dust cloud?

6 A. Yes, common sense would tell you that. And
7 the scientific measurements have also shown us that.

8 Q. Do you have an opinion to a reasonable
9 degree of medical certainty whether Mrs. Herford had
10 exposure to asbestos from cosmetic talcum powder
11 products?

12 MR. MASAITIS: Objection. Lacks foundation.

13 THE COURT: Why don't we rephrase the question.

14 MR. STUEMKE: Okay.

15 Q. Have you reviewed Mrs. Herford's deposition
16 testimony?

17 A. Yes, I have.

18 Q. Okay. Have you formed opinions regarding
19 the ways in which she used various products?

20 A. Yes.

21 Q. And have you formed opinions about her
22 asbestos exposures that she experienced?

23 A. Yes.

24 Q. Do you have an opinion to a reasonable
25 degree of medical certainty, Doctor, whether
26 Mrs. Herford had exposure to asbestos from her cosmetic
27 talcum powder?

28 MR. MASAITIS: Objection, Your Honor. Assumes

1 facts not in evidence. Lacks foundation, Jennings.

2 THE COURT: Overruled.

3 THE WITNESS: Yes.

4 Q. BY MR. STUEMKE: What that opinion?

5 A. That she had asbestos exposure from her
6 decades-long use of talcum powder.

7 Q. Would that asbestos exposure have been above
8 background?

9 A. Yes.

10 MR. CALFO: Objection, Your Honor. Same
11 objection.

12 THE COURT: Overruled.

13 Q. BY MR. STUEMKE: And when an occupational
14 medicine doctor says an exposure to asbestos occurred
15 above background, what does that mean?

16 A. Well, we know that because of the widespread
17 use of asbestos, that when you look at overall air
18 levels in the community, that there is a very small but
19 measurable amount of asbestos that you can measure. And
20 that's called the background level. And so that's what
21 we describe as the ambient or background level of
22 asbestos.

23 Q. And you said her exposures to asbestos from
24 cosmetic talcum powder would have been above that?

25 A. Yes, it would have been.

26 Q. In general terms how would you compare those
27 levels?

28 MR. CALFO: Same objection, Your Honor.

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1 THE COURT: Overruled.

2 THE WITNESS: The levels of ambient exposure that
3 have been measured and described by the government
4 agencies responsible for measuring this are -- for
5 ambient air is approximately 0.00005 fibers per cubic
6 centimeter.

7 The measurements that have been described in
8 the medical literature with respect to and in other
9 documents with respect to the use of talc have been
10 thousands fold greater.

11 MR. MASAITIS: Objection, Your Honor. Move to
12 strike.

13 THE COURT: Overruled.

14 Q. BY MR. STUEMKE: Now, we talked about how
15 epidemiology relates to occupational medicine earlier.
16 Have you reviewed epidemiology studies of talc miners
17 from Italy?

18 A. Yes.

19 Q. And the jury has heard suggestion that there
20 are no mesotheliomas in those Italian miner and miller
21 studies.

22 Is that true?

23 A. None that they describe. In those studies
24 there are none.

25 Q. Would you characterize those -- first, when
26 we say "those epidemiology studies," can you describe
27 how many studies we're talking about.

28 A. It's really one group of workers that they

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1 followed. And there have been three studies that have
2 been done in follow-up of this one group of workers.

3 Q. Okay. And do those reports of that group of
4 people have strengths and weaknesses?

5 A. Yes.

6 Q. Would you describe some of the weaknesses of
7 that series of studies in terms of detecting
8 mesothelioma?

9 MR. MASAITIS: Objection, Your Honor. Beyond the
10 scope of this expert's expertise.

11 THE COURT: Overruled.

12 THE WITNESS: Sure. First of all, mesothelioma is
13 an exceedingly rare cancer. So we know that it occurs
14 on the order in the United States of less than 1 per
15 million in the population if we look at the fact that --
16 or a little more than 1 per million in the population,
17 if there are 4,000 cases and there are 350 million
18 people.

19 They followed about 1,800 miners and
20 millers. Of that group -- they followed them, and over
21 the studies more and more of them died. So they were
22 doing a mortality study. They were reporting out on, I
23 think at maximum, a little over a thousand deaths.

24 There were a number of issues. They
25 excluded all women. They excluded anyone over 85. They
26 didn't consider what they might have died of. And
27 that's fairly arbitrary.

28 They didn't -- well, they did address the

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1 fact -- and this is a strength -- that it was mentioned
2 that the -- I believe it was mentioned in one of the
3 studies that the dust -- that their exposures and the
4 dust-suppression mechanisms were in place in the
5 mid-1940s. So the exposures that the earlier people
6 have had might have been far greater than people in the
7 later years but don't differentiate between the earlier
8 groups and the later groups.

9 But their comparison group -- in any
10 population when you're doing a study, you say how many
11 would you expect in a given population. We know in
12 the -- that the expected rate that they were comparing
13 to was in a region of Italy where there is a lot of
14 asbestos used in various industries. So the rates of
15 mesothelioma are higher; so there's a higher expected
16 rate or a higher level in the community that they were
17 comparing it to. So that was one of the flaws.

18 They included people who might have had one
19 month of exposure in the workplace. They -- that was
20 one of the criteria; so we don't know exactly how long
21 they worked there or what they were doing. There is
22 some question of the qualification of if they were a
23 miller or miner and what they were actually doing within
24 the mines or mills. So there are a number of flaws to
25 the studies.

26 There's also some numbers that don't seem to
27 make sense. Some cancers seem to be lower in a later
28 study that were reported in an earlier study, which

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1 doesn't make sense because I don't know how the cancers
2 go away. But yet they reported fewer numbers of a
3 certain type of cancer.

4 Q. BY MR. STUENKE: Now, if you were to look
5 for an ideal study to study epidemiologically whether a
6 certain agent could cause a rare disease like
7 mesothelioma, would you want to have a very large number
8 of people involved?

9 A. You would. And you would need a very large
10 number in order to have enough what we call statistical
11 power, ability to see if there is a meaningful
12 difference. And so that's why often these studies quite
13 frankly aren't done, because they take a lot of time and
14 effort and money to do a very large study.

15 But you do need a large group in order to
16 adequately answer the question and to have enough power
17 to see a difference.

18 Q. Let me just cut to the chase. These Italian
19 studies -- based on your review, are these studies
20 powerful enough to say that the Italian talc that those
21 people were involved with does not cause mesothelioma?

22 A. Well, first of all, these weren't end users.
23 So this is talking about only those folks who were
24 dealing with the rock and the actual talc as it was
25 being taken out of the earth and perhaps milled, but not
26 the people who were dealing with finished product.

27 So we've seen differences in the United
28 States between rates of disease among asbestos miners

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1 and millers, which tend to be lower, than those who were
2 actually working with the finished product where there
3 is greater releasability. So that's first off.

4 They don't have -- and there was not a large
5 number of individuals that they were following. So I
6 don't think there was sufficient power to be able to
7 answer the question they were looking at. They didn't
8 have a large enough sample size.

9 Q. So did those studies prove that somebody
10 that used a product containing Italian talc that came
11 out of those mines could not develop mesothelioma from
12 that product?

13 A. No.

14 Q. I'd like to now talk with you about your
15 opinions regarding Ms. Herford.

16 A. Okay.

17 Q. Can you describe, based on your review of
18 the materials you were provided, her history of exposure
19 that she had?

20 A. Sure. Mrs. Herford had baby powder applied
21 to her. Johnson & Johnson's Baby Powder was applied to
22 her from when she was an infant to around 1966. It was
23 applied on her body except to her face. She noted there
24 was some powder on the floor when it was being applied.

25 She then used Shower to Shower powder, and
26 used that starting around age 10 to 12, and used that
27 every time she showered until around 1980.

28 She also used some other talcum products

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1 when she was a teenager in high school. She used some
2 Jean Nate, some Jovan Musk, some Intimate. In later
3 years she also used some other perfumed talcum powders,
4 White Diamonds and Passion, starting around 1990 until
5 about 2010, 2012.

6 When her children were born in 1980, she
7 applied Johnson & Johnson to her two daughters and was
8 also using the Johnson & Johnson on herself. She
9 applied the powder to her children after she diapered
10 them and after she bathed them, and cleaned up after
11 applying the powder, and used the Johnson & Johnson Baby
12 Powder until around 1993 and I think stopped using
13 powders around 2012.

14 Q. Based on the exposure history, the medical
15 records, the testing and internal documents that you've
16 seen, scientific and medical literature, have you
17 reached an opinion as to the cause of Tina Herford's
18 mesothelioma?

19 A. Yes.

20 Q. What caused her mesothelioma in your
21 opinion?

22 A. Her decades of exposure to cosmetic talc or
23 the various talcum powders she used caused it. And
24 there might be a contribution as well from the
25 radiation.

26 Q. Okay. Do you hold that opinion to a
27 reasonable degree of medical certainty?

28 A. Yes.

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1 Q. I'm going to ask you just a couple of
2 hypothetical questions, and then we'll be done.

3 Dr. Moline, I would like you to assume that
4 the Johnson & Johnson's baby powder and Shower to Shower
5 talc products that Mrs. Herford used contained asbestos.

6 With that assumption in mind, combined with
7 your education, training, and experience, do you have an
8 opinion whether she was exposed to asbestos from those
9 products?

10 MR. MASAITIS: Objection, Your Honor. Assumes
11 facts not in evidence. Lacks foundation. Jennings.

12 THE COURT: Overruled.

13 Q. BY MR. STUEMKE: Do you have the question in
14 mind, Doctor? I can ask it again.

15 A. I think you're asking if I have an opinion,
16 and I do have an opinion.

17 Q. What is that opinion?

18 A. That her exposure to Johnson & Johnson's
19 Baby Powder, assuming those facts, caused her
20 mesothelioma or contributed to her mesothelioma.

21 Q. Would those exposures have been substantial
22 contributing factors in the development of her
23 mesothelioma to a reasonable degree of medical
24 certainty?

25 A. Yes, they would have been.

26 Q. Dr. Moline, next exposure hypothetical.

27 I would like you to assume that the
28 Johnson & Johnson's baby powder products that

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1 Mrs. Herford used in about 1980 and from 1989 to 1993
2 contained asbestos.

3 I would like you to further assume that
4 Cyprus, the predecessor to Imerys Talc America, supplied
5 some of the talc used in Johnson's baby powder in 1980
6 and all of the talc used in Johnson's baby powder
7 beginning in 1989.

8 With those assumptions in mind, combined
9 with your knowledge of Tina Herford's use of those
10 products and your education, training, and experience,
11 do you have an opinion whether she was exposed to
12 asbestos from the talc supplied by Cyprus?

13 MR. MASAITIS: Objection, Your Honor. Assumes
14 facts not in evidence. Lacks foundation. Jennings.

15 THE COURT: Overruled.

16 THE WITNESS: Yes, I do.

17 Q. BY MR. STUEMKE: What is that opinion,
18 Doctor?

19 A. That the talcum powder was a substantial
20 contributing factor.

21 Q. And do you hold that opinion to a reasonable
22 degree of medical certainty?

23 A. I do.

24 MR. STUEMKE: No further questions.

25 THE COURT: Cross-examination?

26 MR. CALFO: Yes, Your Honor.

27 May we have just a minute to set up?

28 THE COURT: Certainly.

CROSS-EXAMINATION

BY MR. CALFO:

Q. Good morning, Dr. Moline. My eye is twitching. I don't know why. I'm having a contact problem. So it's nothing about your answers why I'm twitching like that.

A. Or my presence.

Q. Forgive me.

All right. So, Dr. Moline, I want to talk a little bit about your courtroom experience. Okay?

A. Sure.

Q. And you're no stranger to the courtroom, are you, Doctor?

A. No.

Q. In fact, you've been testifying in litigation for over 20 years; true?

A. It's about 20 years, yes.

Q. And, Doctor, you testify in asbestos cases about once a month; true?

A. About that, yes.

Q. And all of your testimony in asbestos cases has been on behalf of the plaintiffs; true?

A. Yes.

Q. And I think you told us you charge the plaintiffs' law firm, Simon Greenstone, \$550 an hour?

A. I said actually my organization charges them for my courtroom time, but yes.

Q. And you've made at least 2- to \$3 million

1 testifying on behalf of plaintiffs in asbestos
2 litigation; fair?

3 A. Over 20 years, yes.

4 Q. Dr. Moline, this is the first time you've
5 ever testified at trial where it was alleged Johnson's
6 baby powder or Shower to Shower body powder somehow
7 caused someone's mesothelioma; true?

8 A. In a courtroom, I believe that is correct.

9 Q. Now, you told the jury you're an
10 occupational and environmental medicine doctor; true?
11 Did I say that right?

12 A. That I told them -- that is what I am.

13 Q. Okay. And just so we're clear, there are
14 doctors who specialize in lung disease; right?

15 A. Yes, they're called pulmonologists.

16 Q. And you're not a pulmonologist; true?

17 A. Correct.

18 Q. And there are doctors who specialize in
19 pathology; true?

20 A. Yes.

21 Q. And you're not a pathologist?

22 A. I am not.

23 Q. And there are doctors who specialize in
24 oncology, the treatment of cancer; true?

25 A. Right. And I said earlier I was not an
26 oncologist.

27 Q. And you do not treat patients with cancer,
28 including mesothelioma; isn't that right?

1 A. I assist in their care. I do not give
2 chemotherapy. But I am -- for some of my patients I --
3 they don't stop seeing me just because they're seeing an
4 oncologist. So I will work in concert with their
5 oncologist, but I certainly leave the specific cancer
6 treating to the oncologist.

7 Q. Forgive me. I'm going to ask a few similar
8 questions. You're not a radiologist; true?

9 A. Correct.

10 Q. You're not what they call a cell biologist;
11 right?

12 A. That is correct.

13 Q. You're not a toxicologist?

14 A. I am not.

15 Q. And you're not an industrial hygienist;
16 correct?

17 A. Correct.

18 Q. And, Dr. Moline, you've done no workplace
19 testing for airborne asbestos, have you?

20 A. I personally have not myself put monitors on
21 people.

22 Q. Okay. Now, you've talked a little bit and
23 the jury has heard about epidemiology. To be clear,
24 Dr. Moline, you have no degree and no certification in
25 epidemiology; right?

26 A. I'm unaware of a certification in
27 epidemiology. I don't have -- I don't think one exists.
28 And I do not have a formal degree in epidemiology.

1 Q. In fact, you've testified under oath that
2 you do not consider yourself an epidemiologist; true?

3 A. That is correct.

4 Q. And you've told us, I think when Mr. Stuemke
5 was asking you questions, that you've written over --
6 was it 50 articles in your career?

7 A. It's somewhere over 50. I haven't counted
8 recently.

9 Q. Okay. And, Doctor, none of the articles
10 that you've written discuss cosmetic talc as a potential
11 source of asbestos exposure; true?

12 A. Correct.

13 Q. And of all the articles you've written, only
14 two of them relate to mesothelioma specifically, as you
15 said; right?

16 A. Yes.

17 Q. And neither of those two articles have
18 anything to do with cosmetic talc; true?

19 A. Correct.

20 Q. Now, let me change subjects for a little
21 bit. You told the jury about all the asbestos
22 screenings that you've done over the years. And I think
23 you mentioned Mt. Sinai and your current position.

24 Have you mentioned those?

25 A. I don't think we talked about screenings
26 that I've done over the years. I talked about the fact
27 that we're seeing patients now in our clinical center
28 and that I've -- I have taken part in screenings. But I

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1 don't think we discussed --

2 Q. Well, I may have misunderstood you, Doctor.
3 Forgive me.

4 But over your 20-year career, you've seen, I
5 think you told us, hundreds of individuals with actual
6 asbestos-related illnesses; true?

7 A. No. In fact, I didn't say that earlier
8 today. I said that we saw 700 people last year with
9 asbestos exposure. Some of them have disease.

10 And I've been doing this for 26 years now.
11 And over the course of 26 years, I've seen thousands of
12 individuals with asbestos exposure -- not all of them
13 have disease, thankfully, but all of them were seen --
14 who had some modicum of asbestos exposure.

15 Q. Let me ask you this: How many patients in
16 the clinical setting do you believe you have seen who
17 have an actual asbestos-related disease?

18 A. Goodness. I know from some of the groups
19 that we see currently, that about 50 percent of them
20 have asbestos-related radiologic findings. Not all of
21 them might have symptoms. But they have X-ray findings
22 that are associated that are asbestos-related disease.
23 In other groups the numbers aren't as high. But it
24 certainly would be hundreds of folks with
25 asbestos-related disease.

26 Q. Okay. So you've seen hundreds of
27 individuals with asbestos-related illnesses; fair?
28 A. Yes.

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1 Q. And before being hired by plaintiffs' lawyers to testify in cosmetic talc cases, Doctor, you never attributed any of those hundreds of asbestos-related illnesses to cosmetic talc exposure; true?

6 A. In those construction workers that I was evaluating, I did not.

8 Q. But, Doctor, before being hired by plaintiffs' lawyers to testify in cosmetic talc cases, you never once attributed any of those hundreds of asbestos-related illnesses to cosmetic talc exposure; true?

13 A. That's true. They had other exposures.

14 Q. Now, there's no evidence that talc by itself without asbestos contamination causes mesothelioma; true?

17 A. Not that I'm aware of.

18 Q. In fact, talc without asbestos is not a factor in causing mesothelioma at all; true?

20 A. Correct.

21 Q. So if there's no asbestos in any of Johnson & Johnson's baby powder or Shower to Shower body powder used by Mrs. Herford, then these products could 23 not have caused or contributed to her mesothelioma; true?

26 A. Yes.

27 Q. Thank you, Doctor. Moving right along.
28 Thanks for your patience.

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1 Now, you mentioned a little bit about
2 Mrs. Herford. And you told us about her -- do you
3 remember that? -- in terms of her alleged exposures.

4 A. Yes.

5 Q. All right. Now, you've never spoken to
6 Mrs. Herford before rendering your opinions in this
7 case; true?

8 A. Correct.

9 Q. And you're not one of Mrs. Herford's
10 treating doctors; correct?

11 A. I am not.

12 Q. And you never obtained an exposure history
13 from Mrs. Herford before rendering your opinions;
14 correct?

15 A. Correct.

16 Q. And you've never spoken to any of
17 Mrs. Herford's family members before you gave your
18 opinions; right?

19 A. I did not.

20 Q. All right. And you've never spoken to any
21 of Mrs. Herford's treating doctors; correct?

22 A. Correct.

23 Q. Now, you told us that you reviewed
24 Mrs. Herford's medical records; right, Dr. Moline?

25 A. Correct.

26 Q. So you know that Mrs. Herford was diagnosed
27 with right breast cancer in 1998; true?

28 A. Yes.

Page 1603

1 Q. Mrs. Herford's breast cancer, as you know,
2 was treated aggressively, wasn't it?

3 A. It was treated with the appropriate or the
4 state-of-the-art treatment at that time, yes.

5 Q. You also know that Mrs. Herford received
6 ionizing radiation therapy to treat her right breast
7 cancer; right?

8 A. As part of her comprehensive treatment, yes.

9 Q. And, Dr. Moline, you know ionizing radiation
10 is a known carcinogen; right?

11 A. As a general proposition?

12 Q. Yes.

13 A. Yes.

14 Q. And you agree that there's
15 no-above-background dose of ionizing radiation to the
16 human body that is safe in terms of potentially causing
17 disease; true?

18 A. I'm not in a position to say that every
19 exposure to ionizing radiation causes disease to the
20 human body. There are thousands of people that have
21 received radiation that do not develop disease from it;
22 so I am unclear of any literature. I have not reviewed
23 any literature that specifically said that.

24 MR. CALFO: Your Honor, I'd like to --

25 Q. Well, Dr. Moline, do you remember when you
26 were deposed in this case?

27 A. I remember I was deposed in this case, yes.

28 MR. CALFO: Your Honor, I'd like to read Page 99,

Page 1604

1 lines 11 through 19, of Dr. Moline's deposition.

2 MR. STUEMKE: I would just ask that the witness be
3 provided a copy so she can see the context.

4 THE COURT: Why don't you find it and follow
5 along.

6 MR. STUEMKE: Page 99?

7 MR. CALFO: Lines 11 through 19, counsel.

8 THE COURT: If it's important, you can bring it up
9 on redirect.

10 MR. CALFO: (Reading:)

11 "QUESTION: There is no above
12 background" --

13 MR. STUEMKE: Hold on a second, please.

14 Go ahead.

15 MR. CALFO: (Reading:)

16 "QUESTION: There is
17 no-above-background dose of ionizing
18 radiation to the human body that is safe for
19 the human body. Do you agree with that?

20 "ANSWER: With respect to the
21 potential of causing other types of
22 diseases? Is that what you're asking me?

23 "QUESTION: Yes, in general.

24 "ANSWER: That is correct."

25 Q. Doctor, do you agree that ionizing radiation
26 to the chest generally increases the risk of cancer?

27 A. In answer to those questions, I was thinking
28 about radiation pneumonitis, which is the most

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1 well-known and established complication of radiation to
2 the chest.

3 With respect to radiation to the chest
4 causing cancer, I think that there is potential and that
5 there are some studies that show a very small number of
6 individuals who develop cancers. But it is a very small
7 number of cases out of the hundreds of thousands of
8 individuals who have received radiation.

9 THE COURT: I think you've answered the question.

10 MR. CALFO: Your Honor, I'd like to read from
11 Page 97, line 24, through Page 98, line 2, of
12 Dr. Moline's sworn testimony.

13 "QUESTION: Do you believe ionizing
14 radiation increases the risk of cancer
15 generally?

16 "ANSWER: Yes."

17 Q. Now, Doctor, you agree that ionizing
18 radiation increases the risk of mesothelioma, don't you?

19 A. Yes.

20 Q. And you agree that studies have found that
21 therapeutic radiation to the chest is a possible cause
22 of mesothelioma; true?

23 A. Yes.

24 Q. And the bottom line, Dr. Moline, is it's
25 your expert opinion that Mrs. Herford's radiation
26 treatment for breast cancer was a cause of her
27 mesothelioma; true?

28 A. Yes.

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1 Q. Do you agree with Dr. Brody, because he was
2 mentioned by counsel, that if Mrs. Herford had radiation
3 to her right chest and had no asbestos exposure above
4 background, then her mesothelioma was most likely caused
5 by the therapeutic radiation?

6 A. Yes.

7 Q. Let's move to the next subject if we could,
8 which is background levels. And you talked about those;
9 right, Doctor?

10 A. Yes.

11 Q. And you agree that a de minimis, or a small
12 amount, of asbestos exposure may not be sufficient to
13 cause mesothelioma; true?

14 A. Correct.

15 Q. So if we're talking about cosmetic talc and
16 we assume it's somehow contaminated with asbestos, there
17 has to be enough of a level of contamination in order
18 for you to say it was a significant contributing factor;
19 isn't that right?

20 A. That there has to be enough asbestos that's
21 measurable that would contribute, yes.

22 Q. In fact, you've testified in prior cases
23 that a person's asbestos exposure level must be at least
24 two times that of background for you to attribute the
25 exposure as a cause of mesothelioma; true?

26 A. I believe I've said that within the context
27 of background of .0000 -- .00005 fibers per cubic
28 centimeter, yes.

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1 Q. Is it fair to say, Doctor, that you've
2 opined that a person's asbestos exposure level must be
3 at least two times that of background for you to
4 attribute the exposure to a cause of mesothelioma?

5 MR. STUEMKE: I'm just going to object as vague
6 whether we're talking about cumulatively or at a point
7 in time.

8 THE COURT: Overruled.

9 THE WITNESS: It was a -- I was asked that
10 question, and I said as a general -- that one would have
11 to have an exposure above background for me to attribute
12 it, yes.

13 Q. BY MR. CALFO: Do you remember testifying in
14 a case called Nemeth vs. Brenntag back in New York just
15 a little bit ago?

16 A. Yes.

17 MR. CALFO: Your Honor, I'd like to read
18 Page 2251, line 23, through 2252, line 9, of the
19 witness' sworn testimony in the Nemeth trial.

20 THE COURT: Show it to Mr. Stuemke first, please.

21 MR. CALFO: Of course, Your Honor.

22 MR. STUEMKE: What page did you say?

23 MR. CALFO: Page 2252, lines 5 through 9, of
24 Dr. Moline's sworn trial testimony.

25 In fact for your ease, counsel, I'll read
26 2251, line 23, through 2252, line 9, so we have context.

27 "QUESTION: In terms of contamination,
28 if it's contaminated, there has to be enough

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1 of a level of contamination in order for you
2 as a doctor to say that it's a significant
3 contributing factor; correct?

4 "ANSWER: That was a much clearer
5 question. Thank you. Yes.

6 "QUESTION: Okay. In other words,
7 based on what we already talked about on
8 your cross, it has to be at least two times
9 background level in order for you to
10 attribute it to the cause.

11 "ANSWER: Correct."

12 Q. Now, Dr. Moline, we've been talking a little
13 bit about -- just so we're clear, you're not an expert
14 in microscopes or microscopy; fair to say?

15 A. Correct.

16 Q. And you're also not an expert in geology or
17 mineralogy; true?

18 A. Correct.

19 Q. And you've never tested any cosmetic talc
20 for possible asbestos contamination, have you?

21 A. As a medical doctor, that's not something I
22 do.

23 Q. In other words, it's great to be a medical
24 doctor and we honor medical doctors. But you're not
25 qualified to test talc for asbestos; true?

26 A. I am not qualified to do an actual
27 microscopic measurement, no.

28 Q. And, Doctor, you would rely on a geologist

Page 1609

1 to test talc, wouldn't you?

2 A. In what setting? I would -- a geologist
3 might be talking about asbestos in the Earth. I would
4 rely on a mineralogist or somebody who is an expert in
5 looking at samples or a microscopist to study.

6 Q. Do you remember, Dr. Moline, testifying in a
7 trial called Depoian vs. American International
8 Industries? Do you remember that case?

9 A. Yes.

10 Q. Do you remember that?

11 A. Yes.

12 MR. CALFO: Your Honor, I'd like to read Page 100,
13 lines 5 through 10, of Dr. Moline's sworn trial
14 testimony in the Depoian vs. American International
15 trial.

16 Q. Mr. Stuemke was the lawyer in that case,
17 wasn't he?

18 A. Yes.

19 MR. CALFO: (Reading:)

20 "QUESTION: You're not qualified to
21 test talcum powder for asbestos; correct?

22 "ANSWER: That's correct.

23 "QUESTION: You would rely on an
24 industrial hygienist or a geologist to test
25 talc; correct?

26 "ANSWER: Yes."

27 Q. Now, Dr. Moline, you don't have the
28 expertise to judge the methods that others have used to

Page 1610

1 test talc for possible asbestos contaminations and
2 whether those methods were adequate, do you?

3 A. No.

4 Q. You would defer to a geologist also as to
5 the mineralogical makeup of different talc mines; true?

6 A. I'm sorry. What was that? Your voice
7 trailed off there.

8 Q. I'm sorry. I'm trying not to yell because
9 I'm a little soft spoken.

10 You'd defer --

11 A. That made no sense. But okay. You're
12 trying not to yell because you're soft spoken. Okay.

13 Q. I'm sorry, Doctor?

14 A. I'm sorry. That didn't make sense.

15 THE COURT: Just listen to the question.

16 MR. CALFO: I'm trying to be courteous.

17 THE WITNESS: I'm ready. I didn't hear your
18 words.

19 Q. BY MR. CALFO: You'd defer to a geologist as
20 to the mineralogical makeup of different talc mines;
21 true?

22 A. Yes.

23 Q. You'd defer to other experts as to how much
24 asbestos, if any, was in the specific products used by
25 Mrs. Herford; true?

26 A. I would defer to those who were testing the
27 talcum powder, yes.

28 MR. CALFO: Your Honor, I'd like to read Page 86,

Page 1611

1 lines 13 through 16.

2 MR. STUEMKE: Of?

3 MR. CALFO: Of Dr. Moline's deposition testimony
4 in the Herford matter.

5 "QUESTION: Are you" --

6 THE COURT: Wait until Mr. Stuemke finds it.

7 MR. STUEMKE: You're jumping around a little bit,
8 Alex.

9 MR. CALFO: I'm sorry, counsel.

10 MR. STUEMKE: Page 86, lines what?

11 MR. CALFO: Lines 13 through 16.

12 MR. STUEMKE: Okay.

13 MR. CALFO: (Reading:)

14 "QUESTION: Are you deferring to other
15 experts on the issue of how much asbestos,
16 if any, was in the specific products used by
17 Mrs. Herford?

18 "ANSWER: Yes."

19 Q. Now, Doctor, for the purposes of your
20 opinions in this case, you just assumed there was
21 asbestos contamination in the cosmetic talc products
22 used by Mrs. Herford; right?

23 A. With respect to my -- what I reviewed, it
24 was based on others' work, yes.

25 MR. CALFO: Your Honor, I'd like to read Page 82,
26 lines 12 through 17, the witness' sworn testimony in the
27 Herford deposition.

28 "QUESTION: You have nonetheless, for

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1 purposes of your opinion, made some
2 assumptions about there being asbestos
3 contamination in the cosmetic talc products
4 Mrs. Herford used; correct?

5 "ANSWER: Correct."

6 Q. Now, Dr. Moline, you performed no analysis
7 to quantify the amount of asbestos you assume
8 Mrs. Herford may have been exposed to through her use of
9 cosmetic talc products; true?

10 A. I have not performed -- I have not done a
11 quantitative analysis. Correct.

12 Q. You also did not perform a cumulative
13 asbestos fiber-dose analysis for Mrs. Herford; true?

14 A. Correct.

15 Q. In fact, you're not aware of anyone in this
16 case who has calculated a cumulative asbestos fiber dose
17 for Mrs. Herford; right?

18 A. I'm not aware of anyone. Yes.

19 Q. So, Dr. Moline, what you've done is you've
20 assumed some amount of the cosmetic talc used by
21 Mrs. Herford was contaminated with some amount of
22 asbestos. That's what you assumed; right?

23 A. I have -- based on the information that I've
24 been provided, yes, and various medical literature that
25 has demonstrated that there is asbestos contamination in
26 the talc.

27 MR. CALFO: Your Honor, I'd like to read Page 69,
28 lines 14 through 24, of the witness' sworn testimony in

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1 the Herford deposition.

2 MR. STUEMKE: Hang on just a second.

3 I think this is improper impeachment, Your
4 Honor.

5 THE COURT: Go ahead.

6 MR. CALFO: (Reading:)

7 "QUESTION: What I'm asking you is --
8 because I believe you indicated you have no
9 way to definitively know what is in a
10 particular container of talc Mrs. Herford
11 used. So what I'm asking is if you have
12 instead assumed that some amount of those
13 cosmetic talc containers Mrs. Herford used
14 were contaminated with some amount of
15 asbestos.

16 "ANSWER: Yes."

17 Q. Now, Doctor, so you have no opinion as to
18 what concentration of asbestos there would have been in
19 the cosmetic talc used by Mrs. Herford to say her
20 exposure was a significant cause in her development of
21 mesothelioma; true?

22 A. I think there has been information from
23 Dr. Longo with respect to his testing and finding
24 asbestos in the talcum powder that provides information
25 to me. There's also been information published in -- by
26 others that show that there is asbestos contamination.

27 MR. CALFO: Your Honor, I move to strike.

28 THE COURT: Yeah. The latter portion of the

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1 answer will be stricken --

2 MR. CALFO: Your Honor, I'd like to read --

3 THE COURT: -- as nonresponsive.

4 MR. CALFO: I'd like to read Page 316, line 20,
5 through 317, line 1, of Dr. Moline's sworn testimony at
6 her deposition in this case.

7 "QUESTION: Okay. Do you have an
8 opinion regarding what concentration of
9 asbestos there would need to have been in
10 the cosmetic talc actually used by
11 Mrs. Herford to render her exposure to
12 cosmetic talc a significant causal factor in
13 her development of mesothelioma?

14 "ANSWER: I don't have a specific
15 number per se, no. I'm unaware of anyone
16 who has a specific number per se."

17 Q. So, Doctor, the most you can say is the
18 following.

19 And I'd like to put up on the screen Defense
20 exhibit next in order.

21 Ms. Romano, what is it?

22 MS. ROMANO: 8021.

23 Q. BY MR. CALFO: Doctor, the most you can say
24 is the following.

25 Can you please --

26 MR. STUEMKE: I'm sorry.

27 Q. BY MR. CALFO: The most you can say,
28 Dr. Moline, is that Mrs. Herford was potentially exposed

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1 to an unknown amount of asbestos through her use of
2 cosmetic talc products. That's the most you can say,
3 isn't it?

4 A. Correct.

5 Q. Now, you rely on -- I think you talked about
6 the Helsinki criteria; is that right, Doctor?

7 A. Yes.

8 Q. And according to the Helsinki criteria, the
9 presence of asbestos bodies in the lung are the
10 hallmark, or a marker, of asbestos exposure; true?

11 A. Yes.

12 Q. And the studies performed on Mrs. Herford's
13 lung tissue samples in this case did not reveal any
14 asbestos fibers in her lung; true?

15 A. My recollection is it was a minute fragment
16 and there was nothing found in her lung.

17 MR. CALFO: Your Honor, I'd like to read Page 91,
18 lines 22 through 25, of Dr. Moline's sworn testimony in
19 this case at deposition.

20 "QUESTION: In your review of her
21 medical records, you saw no indication that
22 she was diagnosed with asbestosis; is that
23 right?"

24 THE COURT: Is there an answer?

25 MR. CALFO: "ANSWER: Correct."

26 May I have just one second, Your Honor.

27 Actually I read the wrong pages, I noticed,
28 while I was reading it.

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1 Q. Excuse me, Doctor.

2 I'd like to read Page 274, lines 14 through
3 19, of your sworn testimony.

4 "QUESTION: Let's assume tremolite
5 asbestos exposure. When considering
6 tremolite asbestos exposure, are asbestos
7 bodies the hallmark of asbestos exposure?

8 "ANSWER: With respect to their
9 present informs you, yes. But only a small
10 percentage become coated to form asbestos
11 bodies."

12 Now, Doctor, there's nothing in the Helsinki
13 criteria that discusses looking at lymph node tissues to
14 determine if mesothelioma is attributable to asbestos;
15 true?

16 A. There's nothing about lymph nodes in the
17 1997. There is some discussion of lymph nodes in the
18 2014.

19 MR. CALFO: Your Honor, I'd like to read Page 274,
20 lines 21 through 25, of Dr. Moline's sworn testimony in
21 the Herford matter.

22 "QUESTION: Are you aware of any
23 reference in the Helsinki criteria to
24 examining regional lymph nodes for purposes
25 of attributing mesothelioma to asbestos
26 exposure?

27 "ANSWER: I don't recall them talking
28 about lymph node analyses within the

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1 Helsinki criteria."

2 Q. Doctor, other markers of asbestos exposures
3 include findings of asbestosis or pleural plaques; true?

4 A. No, that's -- asbestosis is a disease. It
5 is -- so that's not a -- that's a disease entity. It
6 would not be described as a -- it's a disease. It's a
7 condition.

8 Plaques are a marker of asbestos exposure.
9 So one has clinical implications with respect to it's a
10 clinical and radiological diagnosis.

11 Q. And in your review of Mrs. Herford's medical
12 records, you saw no indication that Mrs. Herford has
13 ever been diagnosed with pleural plaques; true?

14 A. That is correct.

15 MR. CALFO: Your Honor, this may be a good
16 stopping point.

17 THE COURT: We'll be in recess until 1:30, ladies
18 and gentlemen.

19 (Whereupon, at 12:01 p.m., the noon
20 recess was taken.)

21 (The next page number is 1618.)

22 * * *

23

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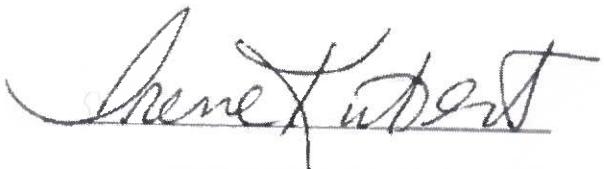
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1 SUPERIOR COURT OF THE STATE OF CALIFORNIA
2 FOR THE COUNTY OF LOS ANGELES
3 DEPARTMENT NER HON. C. EDWARD SIMPSON, JUDGE
4
5 LAOSD ASBESTOS CASES,) NO. JCCP 4674
6 Coordinated Proceeding Special Title)
(Rule 3.550))
7)
TINA HERFORD and DOUGLAS HERFORD,)
8)
Plaintiffs,)
9)
vs.) NO. BC646315
10)
AT&T CORP., a subsidiary of AT&T INC. and)
11 its subsidiary PACIFIC BELL TELEPHONE)
COMPANY, et al.,)
12)
Defendants.)
13)
14
15
16 I, IRENE KUBERT, CSR No. 10105, Official Reporter
17 Pro Tempore of the Superior Court of the State of
18 California, for the County of Los Angeles, do hereby
19 certify that the foregoing pages, 1499 - 1617, comprise
20 a full, true, and correct transcript of the proceedings
21 and testimony taken in the matter of the above-entitled
22 cause on October 26, 2017.
23 Dated this 26th day of October, 2017.
24
25
26
27
28


IRENE KUBERT, RMR, CRR, CLR
Official Reporter Pro Tempore, CSR No. 10105

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